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WASHINGTON'S SECOND INAUGURATION, CONGRESS HALL,
PHILADELPHIA, 1793

From the painting by Ferris. In the Ferris Collection of American Historical Paintings

THE FOUNDERS OF THE UNION

PART 1: THE FATHERS OF THE CONSTITUTION

BY MAX FARRAND

PART 2: WASHINGTON AND HIS COLLEAGUES

BY HENRY JONES FORD

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PART I

THE
FATHERS OF THE CONSTITUTION

A CHRONICLE
OF THE ESTABLISHMENT OF THE UNION

BY
MAX FARRAND

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CONTENTS

I. THE TREATY OF PEACE Page 1

II. TRADE AND INDUSTRY " 22

III. THE CONFEDERATION " 35

IV. THE NORTHWEST ORDINANCE " 55

V. DARKNESS BEFORE DAWN " 81

VI. THE FEDERAL CONVENTION " 108

VII. FINISHING THE WORK " 125

VIII. THE UNION ESTABLISHED " 143

APPENDIX " 167

BIBLIOGRAPHICAL NOTE " 229

INDEX " 235

FATHERS OF THE CONSTITUTION

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CHAPTER I

THE TREATY OF PEACE

"The United States of America"! It was in the Declaration of Independence that this name was first and formally proclaimed to the world, and to maintain its verity the war of the Revolution was fought. Americans like to think that they were then assuming "among the Powers of the Earth the equal and independent Station to which the Laws of Nature and of Nature's God entitle them"; and, in view of their subsequent marvelous development, they are inclined to add that it must have been before an expectant world.

In these days of prosperity and national greatness it is hard to realize that the achievement of independence did not place the United States on a footing of equality with other countries and that, in fact, the new state was more or less an unwelcome member of the world family. It is nevertheless true that the latest comer into the family of nations did not for a long time command the respect of the world. This lack of respect was partly due to the character of the American population. Along with the many estimable and excellent people who had come to British North America inspired by the best of motives, there had come others who were not regarded favorably by the governing classes of Europe. Discontent is frequently a healthful sign and a forerunner of progress, but it makes one an uncomfortable neighbor in a satisfied and conservative community; and discontent was the underlying factor in the migration from the Old World to the New. In any composite immigrant population such as that of the United States there was bound to be a large element of undesirables. Among those who came "for conscience's sake" were the best type of religious protestants, but there were also religious cranks from many countries, of almost every conceivable sect and of no sect at all. Many of the newcomers were poor. It was common, too, to regard colonies as inferior places of residence to which objectionable persons might be encouraged to go and where the average of the population was lowered by the influx of convicts and thousands of slaves.

"The great number of emigrants from Europe" — wrote Thieriot, Saxon Commissioner of Commerce to America, from Philadelphia in 1784 — "has filled this place with worthless persons to such a degree that scarcely a day passes without theft, robbery, or even assassination."[1] It would perhaps be too much to say that the people of the United States were looked upon by the rest of the world as only half civilized, but certainly they were regarded as of lower social standing and of inferior quality, and many of them were known to be rough, uncultured, and ignorant. Great Britain and Germany maintained American missionary societies, not, as might perhaps be expected, for the benefit of the Indian or negro, but for the poor, benighted colonists themselves; and Great Britain refused to commission a minister to her former colonies for nearly ten years after their independence had been recognized.

It is usually thought that the dregs of humiliation have been reached when the rights of foreigners are not considered safe in a particular country, so that another state insists upon establishing therein its own tribunal for the trial of its citizens or subjects. Yet that is what the French insisted upon in the United States, and they were supposed to be especially friendly. They had had their own experience in America. First the native Indian had appealed to their imagination. Then, at an appropriate moment, they seemed to see in the Americans a living embodiment of the philosophical theories of the time: they thought that they had at last found "the natural man" of Rousseau and Voltaire; they believed that they saw the social contract theory being worked out before their very eyes. Nevertheless, in spite of this interest in Americans, the French looked upon them as an inferior people over whom they would have liked to exercise a sort of protectorate. To them the Americans seemed to lack a proper knowledge of the amenities of life. Commissioner Thieriot, describing the administration of justice in the new republic, noticed that: "A Frenchman, with the prejudices of his country and accustomed to court sessions in which the officers have imposing robes and a uniform that makes it impossible to recognize them, smiles at seeing in the court room men dressed in street clothes, simple, often quite common. He is astonished to see the public enter and leave the court room freely, those who prefer even keeping their hats on." Later he adds: "It appears that the court of France wished to set up a jurisdiction of its own on this continent for all matters involving French subjects." France failed in this; but at the very time that peace was under discussion Congress authorized Franklin to negotiate a consular convention, ratified a few years later, according to which the citizens of the United States and the subjects of the French King in the country of the other should be tried by their respective consuls or vice-consuls. Though this agreement was made reciprocal in its terms and so saved appearances for the honor of the new nation, nevertheless in submitting it to Congress John Jay clearly pointed out that it was reciprocal in name rather than in substance, as there were few or no Americans in France but an increasing number of Frenchmen in the United States.

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[1] Quoted by W. E. Lingelbach, *History Teacher's Magazine* March, 1913.

Such was the status of the new republic in the family of nations when the time approached for the negotiation of a treaty of peace with the mother country. The war really ended with the surrender of Cornwallis at Yorktown in 1781. Yet even then the British were unwilling to concede the independence of the revolted colonies. This refusal of recognition was not merely a matter of pride; a division and a consequent weakening of the empire was involved; to avoid this Great Britain seems to have been willing to make any other concessions that were necessary. The mother country sought to avoid disruption at all costs. But the time had passed when any such adjustment might have been possible. The Americans now flatly refused to treat of peace upon any footing except that of independent equality. The British, being in no position to continue the struggle, were obliged to yield and to declare in the first article of the treaty of peace that "His Britannic Majesty acknowledges the said United States . . . to be free, sovereign, and independent states."

With France the relationship of the United States was clear and friendly enough at the time. The American War of Independence had been brought to a successful issue with the aid of France. In the treaty of alliance which had been signed in 1778 it had been agreed that neither France nor the United States should, without the consent of the other, make peace with Great Britain. More than that, in 1781, partly out of gratitude but largely as a result of clever manipulation of factions in

Congress by the French Minister in Philadelphia, the Chevalier de la Luzerne, the American peace commissioners had been instructed "to make the most candid and confidential communications upon all subjects to the ministers of our generous ally, the King of France; to undertake nothing in the negotiations for peace or truce without their knowledge and concurrence; and ultimately to govern yourselves by their advice and opinion."[1] If France had been actuated only by unselfish motives in supporting the colonies in their revolt against Great Britain, these instructions might have been acceptable and even advisable. But such was not the case. France was working not so much with philanthropic purposes or for sentimental reasons as for the restoration to her former position of supremacy in Europe. Revenge upon England was only a part of a larger plan of national aggrandizement.

The treaty with France in 1778 had declared that war should be continued until the independence of the United States had been established, and it appeared as if that were the main purpose of the alliance. For her own good reasons France had dragged Spain into the struggle. Spain, of course, fought to cripple Great Britain and not to help the

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[1] *Secret Journals of Congress*, June 15, 1781.

United States. In return for this support France was pledged to assist Spain in obtaining certain additions to her territory. In so far as these additions related to North America, the interests of Spain and those of the United States were far from being identical; in fact, they were frequently in direct opposition. Spain was already in possession of Louisiana and, by prompt action on her entry into the war in 1780, she had succeeded in getting control of eastern Louisiana and of practically all the Floridas except St. Augustine. To consolidate these holdings and round out her American empire, Spain would have liked to obtain the title to all the land between the Alleghany Mountains and the Mississippi. Failing this, however, she seemed to prefer that the region northwest of the Ohio River should belong to the British rather than to the United States.

Under these circumstances it was fortunate for the United States that the American Peace Commissioners were broad-minded enough to appreciate the situation and to act on their own responsibility. Benjamin Franklin, although he was not the first to be appointed, was generally considered to be the chief of the Commission by reason of his age, experience, and reputation. Over seventy-five years old, he was more universally known and admired than probably any man of his time. This many-sided American — printer, almanac maker, writer, scientist, and philosopher — by the variety of his abilities as well as by the charm of his manner seemed to have found his real mission in the diplomatic field, where he could serve his country and at the same time, with credit to himself, preach his own doctrines.

When Franklin was sent to Europe at the outbreak of the Revolution, it was as if destiny had intended him for that particular task. His achievements had already attracted attention; in his fur cap and eccentric dress "he fulfilled admirably the Parisian ideal of the forest philosopher"; and with his facility in conversation, as well as by the attractiveness of his personality, he won both young and old. But, with his undoubted zeal for liberty and his unquestioned love of country, Franklin never departed from the Quaker principles he affected and always tried to avoid a fight. In these efforts, owing to his shrewdness and his willingness to compromise, he was generally successful.

John Adams, being then the American representative at The Hague, was the first Commissioner to be appointed. Indeed, when he was first named, in 1779, he was to be sole commissioner to negotiate peace; and it was the influential French Minister to the United States who was responsible for others being added to the commission. Adams was a sturdy New Englander of British stock and of a distinctly English type — medium height, a stout figure, and a ruddy face. No one questioned his honesty, his straightforwardness, or his lack of tact. Being a man of strong mind, of wide reading and even great learning, and having serene confidence in the purity of his motives as well as in the soundness of his judgment, Adams was little inclined to surrender his own views, and was ready to carry out his ideas against every obstacle. By nature as well as by training he seems to have been incapable of understanding the French; he was suspicious of them and he disapproved of Franklin's popularity even as he did of his personality.

Five Commissioners in all were named, but Thomas Jefferson and Henry Laurens did not take part in the negotiations, so that the only other active member was John Jay, then thirty-seven years old and already a man of prominence in his own country. Of French Huguenot stock and type, he was tall and slender, with somewhat of a scholar's stoop, and was usually dressed in black. His manners were gentle and unassuming, but his face, with its penetrating black eyes, its aquiline nose and pointed chin, revealed a proud and sensitive disposition. He had been sent to the court of Spain in 1780, and there he had learned enough to arouse his suspicions, if nothing more, of Spain's designs as well as of the French intention to support them.

In the spring of 1782 Adams felt obliged to remain at The Hague in order to complete the negotiations already successfully begun for a commercial treaty with the Netherlands. Franklin, thus the only Commissioner on the ground in Paris, began informal negotiations alone but sent an urgent call to Jay in Spain, who was convinced of the fruitlessness of his mission there and promptly responded. Jay's experience in Spain and his knowledge of Spanish hopes had led him to believe that the French were not especially concerned about American interests but were in fact willing to sacrifice them if necessary to placate Spain. He accordingly insisted that the American Commissioners should disregard their instructions and, without the knowledge of France, should deal directly with Great Britain. In this contention he was supported by Adams when he arrived, but it was hard to persuade Franklin to accept this point of view, for he was unwilling to believe anything so unworthy of his admiring and admired French. Nevertheless, with his cautious shrewdness, he finally yielded so far as to agree to see what might come out of direct negotiations.

The rest was relatively easy. Of course there were difficulties and such sharp differences of opinion that, even after long negotiation, some matters had to be compromised. Some problems, too, were found insoluble and were finally left without a settlement. But such difficulties as did exist were slight in comparison with the previous hopelessness of reconciling American and Spanish ambitions, especially when the latter were supported by France. On the one hand, the Americans were the protégés of the French and were expected to give way before the claims of their patron's friends to an extent which threatened to limit seriously their growth and development. On the other hand, they were the younger sons of England, uncivilized by their wilderness life, ungrateful and rebellious, but still to be treated by England as children of the blood. In the all-important question of extent of territory, where Spain and France would have limited the United States to the east of the Alleghany Mountains, Great Britain was persuaded without great difficulty, having once conceded independence to the United States, to yield the boundaries which she herself had formerly claimed — from the Atlantic Ocean on the east to the Mississippi River on the west, and from Canada on the north to the southern boundary of Georgia. Unfortunately the northern line, through ignorance and carelessness rather than through malice, was left uncertain at various points and became the subject of almost continuous controversy until the last bit of it was settled in 1911.[1]

The fisheries of the North Atlantic, for which Newfoundland served as the chief entrepôt, had been one of the great assets of North America from the time of its discovery. They had been one of the chief prizes at stake in the struggle between the French and the British for the possession of the continent, and they had been of so much value that a British statute of 1775 which cut off the New England fisheries was regarded, even after the "intolerable acts" of the previous year, as the height of punishment for New England. Many Englishmen would have been glad to see the Americans excluded from these fisheries, but John Adams, when he arrived from The Hague, displayed an appreciation of New England interests and the quality of his temper as well by flatly refusing to agree to any treaty which did not allow full fishing privileges. The British accordingly yielded and the Americans were granted fishing rights as "heretofore" enjoyed. The right of navigation of the Mississippi River, it was declared in the treaty, should "forever remain free and open" to both parties; but here Great Britain was simply passing on to the United States a formal right which she had received from France and was retaining for herself a similar right which might sometime prove of use, for as long as Spain held both banks at the mouth of the Mississippi River, the right was of little practical value.

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[1] See Lord Bryce's Introduction (p. xxiv) to W. A. Dunning, *The British Empire and the United States* (1914).

Two subjects involving the greatest difficulty of arrangement were the compensation of the Loyalists and the settlement of commercial indebtedness. The latter was really a question of the payment of British creditors by American debtors, for there was little on the other side of the balance sheet, and it seems as if the frugal Franklin would have preferred to make no concessions and would have allowed creditors to take their own chances of getting paid. But the matter appeared to Adams in a different light — perhaps his New England conscience was aroused — and in this point of view he was supported by Jay. It was therefore finally agreed "that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all *bona fide* debts heretofore contracted." However just this provision may have been, its incorporation in the terms of the treaty was a mistake on the part of the Commissioners, because the Government of the United States had no power to give effect to such an arrangement, so that the provision had no more value than an emphatic expression of opinion. Accordingly, when some of the States later disregarded this part of the treaty, the British had an excuse for refusing to carry out certain of their own obligations.

The historian of the Virginia Federal Convention of 1788, H. B. Grigsby, relates an amusing incident growing out of the controversy over the payment of debts to creditors in England:

> A Scotchman, John Warden, a prominent lawyer and good classical scholar, but suspected rightly of Tory leanings during the Revolution, learning of the large minority against the repeal of laws in conflict with the treaty of 1783 (*i. e.*, especially the laws as to the collection of debts by foreigners) caustically remarked that some of the members of the House had voted against paying for the coats on their backs. The story goes

that he was summoned before the House in full session, and was compelled to beg their pardon on his knees; but as he rose, pretending to brush the dust from his knees, he pointed to the House and said audibly, with evident double meaning, "Upon my word, a dommed dirty house it is indeed." The Journal of the House, however, shows that the honor of the delegates was satisfied by a written assurance from Mr. Warden that he meant in no way to affront the dignity of the House or to insult any of its members.

The other question, that of compensating the Loyalists for the loss of their property, was not so simple a matter, for the whole story of the Revolution was involved. There is a tendency among many scholars of the present day to regard the policy of the British toward their North American colonies as possibly unwise and blundering but as being entirely in accordance with the legal and constitutional rights of the mother country, and to believe that the Americans, while they may have been practically and therefore morally justified in asserting their independence, were still technically and legally in the wrong. It is immaterial whether or not that point of view is accepted, for its mere recognition is sufficient to explain the existence of a large number of Americans who were steadfast in their support of the British side of the controversy. Indeed, it has been estimated that as large a proportion as one-third of the population remained loyal to the Crown. Numbers must remain more or less uncertain, but probably the majority of the people in the United States, whatever their feelings may have been, tried to remain neutral or at least to appear so; and it is undoubtedly true that the Revolution was accomplished by an aggressive minority and that perhaps as great a number were actively loyal to Great Britain.

These Loyalists comprised at least two groups. One of these was a wealthy, property-owning class, representing the best social element in the colonies, extremely conservative, believing in privilege and fearing the rise of democracy. The other was composed of the royal office-holders, which included some of the better families, but was more largely made up of the lower class of political and social hangers-on, who had been rewarded with these positions for political debts incurred in England. The opposition of both groups to the Revolution was inevitable and easily to be understood, but it was also natural that the Revolutionists should incline to hold the Loyalists, without distinction, largely responsible for British pre-Revolutionary policy, asserting that they misinformed the Government as to conditions and sentiment in America, partly through stupidity and partly through selfish interest. It was therefore perfectly comprehensible that the feeling should be bitter against them in the United States, especially as they had given efficient aid to the British during the war. In various States they were subjected to personal violence at the hands of indignant "patriots," many being forced to flee from their homes, while their property was destroyed or confiscated, and frequently these acts were legalized by statute.

The historian of the Loyalists of Massachusetts, James H. Stark, must not be expected to understate the case, but when he is describing, especially in New England, the reign of terror which was established to suppress these people, he writes:

> Loyalists were tarred and feathered and carried on rails, gagged and bound for days at a time; stoned, fastened in a room with a fire and the chimney stopped on top; advertised as public enemies, so that they would be cut off from all dealings with their neighbors; they had bullets shot into their bedrooms, their horses poisoned or mutilated; money or valuable plate extorted from them to save them from violence, and on pretence of taking security for their good behavior; their houses and ships burned; they were compelled to pay the guards who watched them in their houses, and

when carted about for the mob to stare at and abuse, they were compelled to pay something at every town.

There is little doubt also that the confiscation of property and the expulsion of the owners from the community were helped on by people who were debtors to the Loyalists and in this way saw a chance of escaping from the payment of their rightful obligations. The "Act for confiscating the estates of certain persons commonly called absentees" may have been a measure of self-defense for the State but it was passed by the votes of those who undoubtedly profited by its provisions.

Those who had stood loyally by the Crown must in turn be looked out for by the British Government, especially when the claims of justice were reinforced by the important consideration that many of those with property and financial interests in America were relatives of influential persons in England. The immediate necessity during the war had been partially met by assisting thousands to go to Canada — where their descendants today form an important element in the population and are proud of being United Empire Loyalists — while pensions and gifts were supplied to others. Now that the war was over the British were determined that Americans should make good to the

Loyalists for all that they had suffered, and His Majesty's Commissioners were hopeful at least of obtaining a proviso similar to the one relating to the collection of debts. John Adams, however, expressed the prevailing American idea when he said that "paying debts and compensating Tories" were two very different things, and Jay asserted that there were certain of these refugees whom Americans never would forgive.

But this was the one thing needed to complete the negotiations for peace, and the British arguments on the injustice and irregularity of the treatment accorded to the Loyalists were so strong that the American Commissioners were finally driven to the excuse that the Government of the Confederation had no power over the individual States by whom the necessary action must be taken. Finally, in a spirit of mutual concession at the end of the negotiations, the Americans agreed that Congress should "recommend to the legislatures of the respective states to provide for the restitution" of properties which had been confiscated "belonging to real British subjects," and "that persons of any other description" might return to the United States for a period of twelve months and be "unmolested in their endeavours to obtain the restitution."

With this show of yielding on the part of the American Commissioners it was possible to conclude the terms of peace, and the preliminary treaty was drawn accordingly and agreed to on November 30, 1782. Franklin had been of such great service during all the negotiations, smoothing down ruffled feelings by his suavity and tact and presenting difficult subjects in a way that made action possible, that to him was accorded the unpleasant task of communicating what had been accomplished to Vergennes, the French Minister, and of requesting at the same time "a fresh loan of twenty million francs." Franklin, of course, presented his case with much "delicacy and kindliness of manner" and with a fair degree of success. "Vergennes thought that the signing of the articles was premature, but he made no inconvenient remonstrances, and procured six millions of the twenty."[1] On September 3, 1783, the definitive treaty of peace was signed and in due time it was ratified by the British Parliament as well as by the American Congress. The new state, duly accredited, thus took its place in the family of nations; but it was a very humble place that was first assigned to the United States of America.

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[1] Channing, *History of the United States*, vol. iii, p. 368.

CHAPTER II

TRADE AND INDUSTRY

THOUGH the word revolution implies a violent break with the past, there was nothing in the Revolution that transformed the essential character or the characteristics of the American people. The Revolution severed the ties which bound the colonies to Great Britain; it created some new activities; some soldiers were diverted from their former trades and occupation; but, as the proportion of the population engaged in the war was relatively small and the area of country affected for any length of time was comparatively slight, it is safe to say that in general the mass of the people remained about the same after the war as before. The professional man was found in his same calling; the artisan returned to his tools, if he had ever laid them down; the shopkeeper resumed his business, if it had been interrupted; the merchant went back to his trading; and the farmer before the Revolution remained a farmer afterward.

The country as a whole was in relatively good condition and the people were reasonably prosperous; at least, there was no general distress or poverty. Suffering had existed in the regions ravaged by war, but no section had suffered unduly or had had to bear the burden of war during the entire period of fighting. American products had been in demand, especially in the West India Islands, and an illicit trade with the enemy had sprung up, so that even during the war shippers were able to dispose of their commodites at good prices. The Americans are commonly said to have been an agricultural people, but it would be more correct to say that the great majority of the people were dependent upon extractive industries, which would include lumbering, fishing, and even the fur trade, as well as the ordinary agricultural pursuits. Save for a few industries, of which shipbuilding was one of the most important, there was relatively little manufacturing apart from the household crafts. These household industries had increased during the war, but as it was with the individual so it was with the whole country; the general course of industrial activity was much the same as it had been before the war.

A fundamental fact is to be observed in the economy of the young nation: the people were raising far more tobacco and grain and were extracting far more of other products than they could possibly use themselves; for the surplus they must find markets. They had, as well, to rely upon the outside world for a great part of their manufactured goods, especially for those of the higher grade. In other words, from the economic point of view, the United States remained in the former colonial stage of industrial dependence, which was aggravated rather than alleviated by the separation from Great Britain. During the colonial period, Americans had carried on a large amount of this external trade by means of their own vessels. The British Navigation Acts required the transportation of goods in British vessels, manned by crews of British sailors, and specified certain commodities which could be shipped to Great Britain only. They also required that much of the European trade should pass by way of England. But colonial vessels and colonial sailors came under the designation of "British," and no small part of the prosperity of New England, and of the middle colonies as well, had been due to the carrying trade. It would seem therefore as if a primary need of the American people immediately after the Revolution was to get access to their old markets and to carry the goods as much as possible in their own vessels.

In some directions they were successful. One of the products in greatest demand was fish. The fishing industry had been almost annihilated by the war, but with the establishment of peace the New England fisheries began to recover. They were in competition with the fishermen of France and England who were aided by large bounties, yet the superior geographical advantages which the American fishermen possessed enabled them to maintain and expand their business, and the rehabilitation of the fishing fleet was an important feature of their programme. In other directions they were not so successful. The British still believed in their colonial system and applied its principles without regard to the interests of the United States. Such American products as they wanted they allowed to be carried to British markets, but in British vessels. Certain commodities, the production of which they wished to encourage within their own dominions, they added to the prohibited list. Americans cried out indignantly that this was an attempt on the part of the British to punish their former colonies for their temerity in revolting. The British Government may well have derived some satisfaction from the fact that certain restrictions bore heavily upon New England, as John Adams complained; but it would seem to be much nearer the truth to say that in a truly characteristic way the British were phlegmatically attending to their own interests and calmly ignoring the United States, and that there was little malice in their policy.

European nations had regarded American trade as a profitable field of enterprise and as probably responsible for much of Great Britain's prosperity. It was therefore a relatively easy matter for the United States to enter into commercial treaties with foreign countries. These treaties, however, were not fruitful of any great result; for, "with unimportant exceptions, they left still in force the high import duties and prohibitions that marked the European tariffs of the time, as well as many features of the old colonial system. They were designed to legalize commerce rather than to encourage it."[1] Still, for a year or more after the war the demand for American products was great enough to satisfy almost everybody. But in 1784 France and Spain closed their colonial ports and thus excluded the shipping of the United States. This proved to be so disastrous for their colonies that the French Government soon was forced to relax its restrictions. The British also made some concessions, and where their orders were not modified they were evaded. And so, in the course of a few years, the West India trade recovered.

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[1] Clive Day, *Encyclopedia of American Government*, vol. i, p. 340.

More astonishing to the men of that time than it is to us was the fact that American foreign trade fell under British commercial control again. Whether it was that British merchants were accustomed to American ways of doing things and knew American business conditions; whether other countries found the commerce not as profitable as they had expected, as certainly was the case with France; whether "American merchants and sea captains found themselves under disadvantages due to the absence of treaty protection which they had enjoyed as English subjects";[1] or whether it was the necessity of trading on British capital — whatever the cause may have been — within a comparatively few years a large part of American trade was in British hands as it had been before the Revolution. American trade with Europe was carried on through English merchants very much as the Navigation Acts had prescribed.

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[1] C. R. Fish, *American Diplomacy*, pp. 56–57.

From the very first settlement of the American continent the colonists had exhibited one of the earliest and most lasting characteristics of the American people — adaptability. The Americans now proceeded to manifest that trait anew, not only by adjusting themselves to renewed commercial dependence upon Great Britain, but by seeking new avenues of trade. A striking illustration of this is to be found in the development of trade with the Far East. Captain Cook's voyage around the world (1768–1771), an account of which was first published in London in 1773, attracted a great deal of attention in America; an edition of the *New Voyage* was issued in New York in 1774. No sooner was the Revolution over than there began that romantic trade with China and the northwest coast of America, which made the fortunes of some families of Salem and Boston and Philadelphia. This commerce added to the prosperity of the country, but above all it stimulated the imagination of Americans. In the same way another outlet was found in trade with Russia by way of the Baltic.

The foreign trade of the United States after the Revolution thus passed through certain well-marked phases. First there was a short period of prosperity, owing to an unusual demand for American products; this was followed by a longer period of depression; and then came a gradual recovery through acceptance of the new conditions and adjustment to them.

A similar cycle may be traced in the domestic or internal trade. In early days intercolonial commerce had been carried on mostly by water, and when war interfered commerce almost ceased for want of roads. The loss of ocean highways, however, stimulated road building and led to what might be regarded as the first "good-roads movement" of the new nation, except that to our eyes it would be a misuse of the word to call any of those roads good. But anything which would improve the means of transportation took on a patriotic tinge, and the building of roads and the cutting of canals were agitated until turnpike and canal companies became a favorite form of investment; and in a few years the interstate land trade had grown to considerable importance. But in the meantime, water transportation was the main reliance, and with the end of the war the coastwise trade had been promptly resumed. For a time it prospered; but the States, affected by the general economic conditions and by jealousy, tried to interfere with and divert the trade of others to their own advantage. This was done by imposing fees and charges and duties, not merely upon goods and vessels from abroad but upon those of their fellow States. James Madison described the situation in the words so often quoted: "Some of the States, . . . having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, thro whose ports, their commerce was carryed on. New Jersey, placed between Phila. & N. York, was likened to a Cask tapped at both ends: and N. Carolina between Virga. & S. Carolina to a patient bleeding at both Arms."[1]

The business depression which very naturally followed the short revival of trade was so serious in its financial consequences that it has even been referred to as the "Panic of 1785." The United States afforded a good market for imported articles in 1783 and 1784, all the better because of the supply of gold and silver which had been sent into the country by England and France to maintain their armies and fleets and which had remained in the United States. But this influx of imported goods was one of the chief factors in causing the depression of 1785, as it brought ruin to many of those domestic industries which had sprung up in the days of non-intercourse or which had been stimulated by the artificial protection of the war.

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[1] *Records of the Federal Convention*, vol. iii, p. 542.

To make matters worse, the currency was in a confused condition. "In 1784 the entire coin of the land, except coppers, was the product of foreign mints. English guineas, crowns, shillings and pence were still paid over the counters of shops and taverns, and with them were mingled many French and Spanish and some German coins. . . . The value of the gold pieces expressed in dollars was pretty much the same the country over. But the dollar and the silver pieces regarded as fractions of a dollar had no less than five different values."[1] The importation of foreign goods was fast draining the hard money out of the country. In an effort to relieve the situation but with the result of making it much worse, several of the States began to issue paper money; and this was in addition to the enormous quantities of paper which had been printed during the Revolution and which was now worth but a small fraction of its face value.

The expanding currency and consequent depreciation in the value of money had immediately resulted in a corresponding rise of prices, which for a while the States attempted to control. But in 1778 Congress threw up its hands in despair and voted that "all limitations of prices of gold and silver be taken off," although the States for some time longer continued to endeavor to regulate prices by legislation.[1] The fluctuating value of the currency increased the opportunities for speculation which war conditions invariably offer, and "immense fortunes were suddenly accumulated." A new financial group rose into prominence composed largely of those who were not accustomed to the use of money and who were consequently inclined to spend it recklessly and extravagantly.

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[1] McMaster, *History of the People of the United States*, vol. i, pp. 190–191.

Many contemporaries comment upon these things, of whom Brissot de Warville may be taken as an example, although he did not visit the United States until 1788:

> The inhabitants . . . prefer the splendor of wealth and the show of enjoyment to the simplicity of manners and the pure pleasures which result from it. If there is a town on the American continent where the English luxury displays its follies, it is New York. You will find here the English fashions: in the dress of the women you will see the most brilliant silks, gauzes,

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[1] W. E. H. Lecky, *The American Revolution*, New York, 1898, pp. 288–294.

> hats, and borrowed hair; equipages are rare, but they are elegant; the men have more simplicity in their dress; they disdain gewgaws, but they take their revenge in the luxury of the table; luxury forms already a class of men very dangerous to society; I mean bachelors; the expense of women causes matrimony to be dreaded by men. Tea forms, as in England, the basis of parties of pleasure; many things are dearer here than in France; a hairdresser asks twenty shilling a month; washing costs four shillings a dozen.[1]

An American writer of a later date, looking back upon his earlier years, was impressed by this same extravagance, and his testimony may well be used to strengthen the impression which it is the purpose of the present narrative to convey:

> The French and British armies circulated immense sums of money in gold and silver coin, which had the effect of driving out of circulation the wretched paper currency which had till then prevailed. Immense quantities of British and French goods were soon imported: our people imbibed a taste for foreign fashions and luxury; and in the course of two or three years, from the close of the war, such an entire change had taken place in the habits and manners of our inhabitants, that it almost appeared as if we had suddenly become a different nation. The staid and sober habits of our ancestors, with their plain home-manufactured clothing,

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[1] Quoted by Henry Tuckerman, *America and her Commentators,* 1864.

> were suddenly laid aside, and European goods of fine quality adopted in their stead. Fine ruffles, powdered heads, silks and scarlets, decorated the men; while the most costly silks, satins, chintzes, calicoes, muslins, etc., etc., decorated our females. Nor was their diet less expensive; for superb plate, foreign spirits, wines, etc., etc., sparkled on the sideboards of many farmers. The natural result of this change of the habits and customs of the people — this aping of European manners and morals, — was to suddenly drain our country of its circulating specie; and as a necessary consequence, the people ran in debt, times became difficult, and money hard to raise.[1]

The situation was serious, and yet it was not as dangerous or even as critical as it has generally been represented, because the fundamental bases of American prosperity were untouched. The way by which Americans could meet the emergency and recover from the hard times was fairly evident — first to economize, and then to find new outlets for their industrial energies. But the process of adjustment was slow and painful. There were not a few persons in the United States who were even disposed to regret that Americans were not safely under British protection and prospering with Great Britain, instead of suffering in political isolation.

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[1] Samuel Kercheval, *History of the Valley of Virginia*, 1833, pp 199–200.

CHAPTER III

THE CONFEDERATION

WHEN peace came in 1783 there were in the United States approximately three million people, who were spread over the whole Atlantic coast from Maine to Georgia and back into the interior as far as the Alleghany Mountains; and a relatively small number of settlers had crossed the mountain barrier. About twenty per cent of the population, or some six hundred thousand, were negro slaves. There was also a large alien element of foreign birth or descent, poor when they arrived in America, and, although they had been able to raise themselves to a position of comparative comfort, life among them was still crude and rough. Many of the people were poorly educated and lacking in cultivation and refinement and in a knowledge of the usages of good society. Not only were they looked down upon by other nations of the world; there was within the United States itself a relatively small upper class inclined to regard the mass of the people as of an inferior order.

Thus, while forces were at work favorable to democracy, the gentry remained in control of affairs after the Revolution, although their numbers were reduced by the emigration of the Loyalists and their power was lessened. The explanation of this aristocratic control may be found in the fact that the generation of the Revolution had been accustomed to monarchy and to an upper class and that the people were wont to take their ideas and to accept suggestions from their betters without question or murmur. This deferential attitude is attested by the indifference of citizens to the right of voting. In our own day, before the great extension of woman suffrage, the number of persons voting approximated twenty per cent of the population, but after the Revolution less than five per cent of the white population voted. There were many limitations upon the exercise of the suffrage, but the small number of voters was only partially due to these restrictions, for in later years, without any radical change in suffrage qualifications, the proportion of citizens who voted steadily increased.

The fact is that many of the people did not care to vote. Why should they, when they were only registering the will or the wishes of their superiors? But among the relatively small number who constituted the governing class there was a high standard of intelligence. Popular magazines were unheard of and newspapers were infrequent, so that men depended largely upon correspondence and personal intercourse for the interchange of ideas. There was time, however, for careful reading of the few available books; there was time for thought, for writing, for discussion, and for social intercourse. It hardly seems too much to say, therefore, that there was seldom, if ever, a people — certainly never a people scattered over so wide a territory — who knew so much about government as did this controlling element of the people of the United States.

The practical character, as well as the political genius, of the Americans was never shown to better advantage than at the outbreak of the Revolution, when the quarrel with the mother country was manifesting itself in the conflict between the Governors, and other appointed agents of the Crown, and the popularly elected houses of the colonial legislatures. When the Crown resorted to dissolving the legislatures, the revolting colonists kept up and observed the forms of government. When the legislature was prevented from meeting, the members would come together and call themselves a congress or a convention, and, instead of adopting laws or orders, would issue what were really nothing more than recommendations, but which they expected would be obeyed by their supporters. To enforce these recommendations extra-legal committees, generally backed by public opinion and sometimes concretely supported by an organized "mob," would meet in towns and counties and would be often effectively centralized where the opponents of the British policy were in control.

In several of the colonies the want of orderly government became so serious that, in 1775, the Continental Congress advised them to form temporary governments until the trouble with Great Britain had been settled. When independence was declared Congress recommended to all the States that they should adopt governments of their own. In accordance with that recommendation, in the course of a very few years each State established an independent government and adopted a written constitution. It was a time when men believed in the social contract or the "compact theory of the state," that states originated through agreement, as the case might be, between king and nobles, between king and people, or among the people themselves. In support of this doctrine no less an authority than the Bible was often quoted, such a passage for example as II Samuel v, 3: "So all the elders of Israel came to the King to Hebron; and King David made a covenant with them in Hebron before the Lord; and they anointed David King over Israel." As a philosophical speculation to explain why people were governed or consented to be governed, this theory went back at least to the Greeks, and doubtless much earlier; and, though of some significance in medieval thought, it became of greater importance in British political philosophy, especially through the works of Thomas Hobbes and John Locke. A very practical application of the compact theory was made in the English Revolution of 1688, when in order to avoid the embarrassment of deposing the king, the convention of the Parliament adopted the resolution: "That King James the Second, having endeavored to subvert the Constitution of the Kingdom, by breaking the original Contract between King and People, and having, by the advice of Jesuits, and other wicked persons, violated the fundamental Laws, and withdrawn himself out of this Kingdom, has abdicated the Government, and that the throne is hereby vacant." These theories were developed by Jean

Jacques Rousseau in his *Contrat Social* — a book so attractively written that it eclipsed all other works upon the subject and resulted in his being regarded as the author of the doctrine — and through him they spread all over Europe.

Conditions in America did more than lend color to pale speculation; they seemed to take this hypothesis out of the realm of theory and to give it practical application. What happened when men went into the wilderness to live? The Pilgrim Fathers on board the *Mayflower* entered into an agreement which was signed by the heads of families who took part in the enterprise: "We, whose names are underwritten . . . Do by these presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick."

Other colonies, especially in New England, with this example before them of a social contract entered into similar compacts or "plantation covenants," as they were called. But the colonists were also accustomed to having written charters granted which continued for a time at least to mark the extent of governmental powers. Through this intermingling of theory and practice it was the most natural thing in the world, when Americans came to form their new State Governments, that they should provide written instruments framed by their own representatives, which not only bound them to be governed in this way but also placed limitations upon the governing bodies. As the first great series of written constitutions, these frames of government attracted wide attention. Congress printed a set for general distribution, and numerous editions were circulated both at home and abroad.

The constitutions were brief documents, varying from one thousand to twelve thousand words in length, which established the framework of the governmental machinery. Most of them, before proceeding to practical working details, enunciated a series of general principles upon the subject of government and political morality in what were called declarations or bills of rights. The character of these declarations may be gathered from the following excerpts:

> That all men are by nature equally free and independent, and have certain inherent rights, . . . the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.

The body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good.

That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

That general warrants, . . . are grievous and oppressive, and ought not to be granted.

All penalties ought to be proportioned to the nature of the offence.

That sanguinary laws ought to be avoided, as far as is consistent with the safety of the State; and no law, to inflict cruel and unusual pains and penalties, ought to be made in any case, or at any time hereafter.

No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines . . .

Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; . . .

That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

It will be perceived at once that these are but variations of the English Declaration of Rights of 1689, which indeed was consciously followed as a model; and yet there is a world-wide difference between the English model and these American copies. The earlier document enunciated the rights of English subjects, the recent infringement of which made it desirable that they should be reasserted in convincing form. The American documents asserted rights which the colonists generally had enjoyed and which they declared to be "governing principles for all peoples in all future times."

But the greater significance of these State Constitutions is to be found in their quality as working instruments of government. There was indeed little difference between the old colonial and the new State Governments. The inhabitants of each of the Thirteen States had been accustomed to a large measure of self-government, and when they took matters into their own hands they were not disposed to make any radical changes in the forms to which they had become accustomed. Accordingly the State Governments that were adopted simply continued a framework of government almost identical with that of colonial times. To be sure, the Governor and other appointed officials were now elected either by the people or the legislature, and so were ultimately responsible to the electors instead of to the Crown; and other changes were made which in the long run might prove of far-reaching and even of vital significance; and yet the machinery of government seemed the same as that to which the people were already accustomed. The average man was conscious of no difference at all in the working of the Government under the new order. In fact, in Connecticut and Rhode Island, the most democratic of all the colonies, where the people had been privileged to elect their own governors, as well as legislatures, no change whatever was necessary and the old charters were continued as State Constitutions down to 1818 and 1842, respectively.

To one who has been accustomed to believe that the separation from a monarchical government meant the establishment of democracy, a reading of these first State Constitutions is likely to cause a rude shock. A shrewd English observer, traveling a generation later in the United States, went to the root of the whole matter in remarking of the Americans that, "When their independence was achieved their mental condition was not instantly changed. Their deference for rank and for judicial and legislative authority continued nearly unimpaired."[1] They might declare that "all men are created equal," and bills of rights might assert that government rested upon the consent of the governed; but these constitutions carefully provided that such consent should come from property owners, and, in many of the States, from religious believers and even followers of the Christian faith. "The man of small means might vote, but none save well-to-do Christians could legislate, and in many states none but a rich Christian could be a governor."[2] In South Carolina, for example, a freehold of £10,000 currency was required of the Governor, Lieutenant Governor, and members of the Council; £2,000 of the members of the Senate; and, while every elector was eligible to the House of Representatives, he had to acknowledge the being of a God and to believe in a future state of rewards and punishments, as well as to hold "a freehold at least of fifty acres of land, or a town lot."

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[1] George Combe, *Tour of the United States*, vol. i, p. 205.

[2] McMaster, *Acquisition of Industrial, Popular, and Political Rights of Man in America*, p. 20.

It was government by a property-owning class, but in comparison with other countries this class represented a fairly large and increasing proportion of the population. In America the opportunity of becoming a property-owner was open to every one, or, as that phrase would then have been understood, to most white men. This system of class control is illustrated by the fact that, with the exception of Massachusetts, the new State Constitutions were never submitted to the people for approval.

The democratic sympathizer of today is inclined to point to those first State Governments as a continuance of the old order. But to the conservative of that time it seemed as if radical and revolutionary changes were taking place. The bills of rights declared, "That no men, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services." Property qualifications and other restrictions on office-holding and the exercise of the suffrage were lessened. Four States declared in their constitutions against the entailment of estates, and primogeniture was abolished in aristocratic Virginia. There was a fairly complete abolition of all vestiges of feudal tenure in the holding of land, so that it may be said that in this period full ownership of property was established. The further separation of church and state was also carried out.

Certainly leveling influences were at work, and the people as a whole had moved one step farther in the direction of equality and democracy, and it was well that the Revolution was not any more radical and revolutionary than it was. The change was gradual and therefore more lasting. One finds readily enough contemporary statements to the effect that, "Although there are no nobles in America, there is a class of men denominated 'gentlemen,' who, by reason of their wealth, their talents, their education, their families, or the offices they hold, aspire to a preëminence," but, the same observer adds, this is something which "the people refuse to grant them." Another contemporary contributes the observation that there was not so much respect paid to gentlemen of rank as there should be, and that the lower orders of people behave as if they were on a footing of equality with them.

Whether the State Constitutions are to be regarded as property-conserving, aristocratic instruments, or as progressive documents, depends upon the point of view. And so it is with the spirit of union or of nationality in the United States. One student emphasizes the fact of there being "thirteen independent republics differing . . . widely in climate, in soil, in occupation, in everything which makes up the social and economic life of the people"; while another sees "the United States a nation." There is something to be said for both sides, and doubtless the truth lies between them, for there were forces making for disintegration as well as for unification. To the student of the present day, however, the latter seem to have been the stronger and more important, although the possibility was never absent that the thirteen States would go their separate ways

There are few things so potent as a common danger to bring discordant elements into working harmony. Several times in the century and a half of their existence, when the colonies found themselves threatened by their enemies, they had united, or at least made an effort to unite, for mutual help. The New England Confederation of 1643 was organized primarily for protection against the Indians and incidentally against the Dutch and French. Whenever trouble threatened with any of the European powers or with the Indians — and that was frequently — a plan would be broached for getting the colonies to combine their efforts, sometimes for the immediate necessity and sometimes for a broader purpose. The best known of these plans was that presented to the Albany Congress of 1754, which had been called to make effective preparation for the inevitable struggle with the French and Indians. The beginning of the troubles which culminated in the final breach with Great Britain had quickly brought united action in the form of the Stamp Act Congress of 1765, in the Committees of Correspondence, and then in the Continental Congress.

It was not merely that the leaven of the Revolution was already working to bring about the freer interchange of ideas; instinct and experience led the colonies to united action. The very day that the Continental Congress appointed a committee to frame a declaration of independence, another committee was ordered to prepare articles of union. A month later, as soon as the Declaration of Independence had been adopted, this second committee, of which John Dickinson of Pennsylvania was chairman, presented to Congress a report in the form of Articles of Confederation. Although the outbreak of fighting made some sort of united action imperative, this plan of union was subjected to debate intermittently for over sixteen months and even after being adopted by Congress, toward the end of 1777, it was not ratified by the States until March, 1781, when the war was already drawing to a close. The exigencies of the hour forced Congress, without any authorization, to act as if it had been duly empowered and in general to proceed as if the Confederation had been formed.

Benjamin Franklin was an enthusiast for union. It was he who had submitted the plan of union to the Albany Congress in 1754, which with modifications was recommended by that congress for adoption. It provided for a Grand Council of representatives chosen by the legislature of each colony, the members to be proportioned to the contribution of that colony to the American military service. In matters concerning the colonies as a whole, especially in Indian affairs, the Grand Council was to be given extensive powers of legislation and taxation. The executive was to be a President or Governor-General, appointed and paid by the Crown, with the right of nominating all military officers, and with a veto upon all acts of the Grand Council. The project was far in advance of the times and ultimately failed of acceptance, but in 1775, with the beginning of the troubles with Great Britain, Franklin took his Albany plan and, after modifying it in accordance with the experience of twenty years, submitted it to the Continental Congress as a new plan of government under which the colonies might unite.

Franklin's plan of 1775 seems to have attracted little attention in America, and possibly it was not generally known; but much was made of it abroad, where it soon became public, probably in the same way that other Franklin papers came out. It seems to have been his practice to make, with his own hand, several copies of such a document, which he would send to his friends with the statement that as the document in question was confidential they might not otherwise see a copy of it. Of course the inevitable happened, and such documents found their way into print to the apparent surprise and dismay of the author. Incidentally this practice caused confusion in later years, because each possessor of such a document would claim that he had the original. Whatever may have been the procedure in this particular case, it is fairly evident that Dickinson's committee took Franklin's plan of 1775 as the starting point of its work, and after revision submitted it to Congress as their report; for some of the most important features of the Articles of Confederation are to be found, sometimes word for word, in Franklin's draft.

This explanation of the origin of the Articles of Confederation is helpful and perhaps essential in understanding the form of government established, because that government in its main features had been devised for an entirely different condition of affairs, when a strong, centralized government would not have been accepted even if it had been wanted. It provided for a "league of friendship," with the primary purpose of considering preparation for action rather than of taking the initiative. Furthermore, the final stages of drafting the Articles of Confederation had occurred at the outbreak of the war, when the people of the various States were showing a disposition to follow readily suggestions that came from those whom they could trust and when they seemed to be willing to submit without compulsion to orders from the same source. These circumstances, quite as much as the inexperience of Congress and the jealousy of the States, account for the inefficient form of government which was devised; and inefficient the Confederation certainly was. The only organ of government was a Congress in which every State was entitled to one vote and was represented by a delegation whose members were appointed annually as the legislature of the State might direct, whose expenses were paid by the State, and who were subject to recall. In other words, it was a council of States whose representatives had little incentive to independence of action.

Extensive powers were granted to this Congress "of determining on peace and war, . . . of entering into treaties and alliances," of maintaining an army and a navy, of establishing post offices, of coining money, and of making requisitions upon the States for their respective share of expenses "incurred for the common defence or general welfare." But none of these powers could be exercised without the consent of nine States, which was equivalent to requiring a two-thirds vote, and even when such a vote had been obtained and a decision had been reached, there was nothing to compel the individual States to obey beyond the mere declaration in the Articles of Confederation that, "Every State shall abide by the determinations of the United States in Congress assembled."

No executive was provided for except that Congress was authorized "to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States.

under their direction." In judicial matters, Congress was to serve as "the last resort on appeal in all disputes and differences" between States; and Congress might establish courts for the trial of piracy and felonies committed on the high seas and for determining appeals in cases of prize capture.

The plan of a government was there but it lacked any driving force. Congress might declare war but the States might decline to participate in it; Congress might enter into treaties but it could not make the States live up to them; Congress might borrow money but it could not be sure of repaying it; and Congress might decide disputes without being able to make the parties accept the decision. The pressure of necessity might keep the States together for a time, yet there is no disguising the fact that the Articles of Confederation formed nothing more than a gentlemen's agreement.

CHAPTER IV

THE NORTHWEST ORDINANCE

The population of the United States was like a body of water that was being steadily enlarged by internal springs and external tributaries. It was augmented both from within and from without, from natural increase and from immigration. It had spread over the whole coast from Maine to Georgia and slowly back into the interior, at first along the lines of river communication and then gradually filling up the spaces between until the larger part of the available land east of the Alleghany Mountains was settled. There the stream was checked as if dammed by the mountain barrier, but the population was trickling through wherever it could find an opening, slowly wearing channels, until finally, when the obstacles were overcome, it broke through with a rush.

Twenty years before the Revolution the expanding population had reached the mountains and was ready to go beyond. The difficulty of crossing the mountains was not insuperable, but the French and Indian War, followed by Pontiac's Conspiracy, made outlying frontier settlement dangerous if not impossible. The arbitrary restriction of western settlement by the Proclamation of 1763 did not stop the more adventurous but did hold back the mass of the population until near the time of the Revolution, when a few bands of settlers moved into Kentucky and Tennessee and rendered important but inconspicuous service in the fighting. But so long as the title to that territory was in doubt no considerable body of people would move into it, and it was not until the Treaty of Peace in 1783 determined that the western country as far as the Mississippi River was to belong to the United States that the dammed-up population broke over the mountains in a veritable flood.

The western country and its people presented no easy problem to the United States: how to hold those people when the pull was strong to draw them from the Union; how to govern citizens so widely separated from the older communities; and, of most immediate importance, how to hold the land itself. It was, indeed, the question of the ownership of the land beyond the mountains which delayed the ratification of the Articles of Confederation. Some of the States, by right of their colonial charter grants "from sea to sea," were claiming large parts of the western region. Other States, whose boundaries were fixed, could put forward no such claims; and, as they were therefore limited in their area of expansion, they were fearful lest in the future they should be overbalanced by those States which might obtain extensive property in the West. It was maintained that the Proclamation of 1763 had changed this western territory into "Crown lands," and as, by the Treaty of Peace, the title had passed to the United States, the non-claimant States had demanded in self-defense that the western land should belong to the country as a whole and not to the individual States. Rhode Island, Maryland, and Delaware were most seriously affected, and they were insistent upon this point. Rhode Island and at length Delaware gave in, so that by February, 1779, Maryland alone held out. In May of that year the instructions of Maryland to her delegates were read in Congress, positively forbidding them to ratify the plan of union unless they should receive definite assurances that the western country would become the common property of the United States. As the consent of all of the Thirteen States was necessary to the establishment of the Confederation, this refusal of Maryland brought matters to a crisis. The question was eagerly discussed, and early in 1780 the deadlock was broken by the action of New York in authorizing her representatives to cede her entire claim in western lands to the United States.

It matters little that the claim of New York was not as good as that of some of the other States, especially that of Virginia. The whole situation was changed. It was no longer necessary for Maryland to defend her position; but the claimant States were compelled to justify themselves before the country for not following New York's example. Congress wisely refrained from any assertion of jurisdiction, and only urgently recommended that States having claims to western lands should cede them in order that the one obstacle to the final ratification of the Articles of Confederation might be removed.

Without much question Virginia's claim was the strongest; but the pressure was too great even for her, and she finally yielded, ceding to the United States, upon certain conditions, all her lands northwest of the Ohio River. Then the Maryland delegates were empowered to ratify the Articles of

Confederation. This was early in 1781, and in a very short time the other States had followed the example of New York and Virginia. Certain of the conditions imposed by Virginia were not acceptable to Congress, and three years later, upon specific request, that State withdrew the objectionable conditions and made the cession absolute.

The territory thus ceded, north and west of the Ohio River, constituted the public domain. Its boundaries were somewhat indefinite, but subsequent surveys confirmed the rough estimate that it contained from one to two hundred millions of acres. It was supposed to be worth, on the average, about a dollar an acre, which would make this property an asset sufficient to meet the debts of the war and to leave a balance for the running expenses of the Government. It thereby became one of the strong bonds holding the Union together.

"Land!" was the first cry of the storm-tossed mariners of Columbus. For three centuries the leading fact of American history has been that soon after 1600 a body of Europeans, mostly Englishmen, settled on the edge of the greatest piece of unoccupied agricultural land in the temperate zone, and proceeded to subdue it to the uses of man. For three centuries the chief task of American mankind has been to go up westward against the land and to possess it. Our wars, our independence, our state building, our political democracy, our plasticity with respect to immigration, our mobility of thought, our ardor of initiative, our mildness and our prosperity, all are but incidents or products of this prime historical fact.[1]

It is seldom that one's attention is so caught and held as by the happy suggestion that American interest in land — or rather interest in American land — began with the discovery of the continent. Even a momentary consideration of the subject, however, is sufficient to indicate how important was the desire for land as a motive of colonization. The foundation of European governmental and social organizations had been laid in feudalism — a system of land-holding and service. And although European states might have lost their original feudal character, and although new classes had arisen, land-holding still remained the basis of social distinction.

One can readily imagine that America would be considered as El Dorado, where one of the rarest commodities as well as one of the most precious possessions was found in almost unlimited quantities and could be had for the asking. It is no wonder that family estates were sought in America and that to the lower classes it seemed as if a heaven were opening on earth. Even though available land appeared to be almost unlimited in quantity and easy to acquire, it was a possession that was generally increasing in value. Of course wasteful methods of farming wore out some lands, especially in the South; but, taking it by and large throughout the country, with time and increasing density of population the value of the land was increasing. The acquisition of land was a matter of investment or at least of speculation. In fact, the purchase of land was one of the favorite get-rich-quick schemes of the time. George Washington was not the only man who invested largely in western lands. A list of those who did would read like a political or social directory of the time. Patrick Henry, James Wilson, Robert Morris, Gouverneur Morris, Chancellor Kent, Henry Knox, and James Monroe were among them.[1]

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[1] Lecture by J. Franklin Jameson before the Trustees of the Carnegie Institution, at Washington, in 1912, printed in the *History Teacher's Magazine*, vol. iv, 1913, p. 5.

It is therefore easy to understand why so much importance attached to the claims of the several States and to the cession of that western land by them to the United States. But something more was necessary. If the land was to attain anything like its real value, settlers must be induced to occupy it. Of course it was possible to let the people go out as they pleased and take up land, and to let the Government collect from them as might be possible at a fixed rate. But experience during colonial days had shown the weakness of such a method, and Congress was apparently determined to keep under its own control the region which it now possessed, to provide for orderly sale, and to permit settlement only so far as it might not endanger the national interests. The method of land sales and the question of government for the western country were recognized as different aspects of the same problem. The Virginia offer of cession forced the necessity of a decision, and no sooner was the Virginia offer framed in an acceptable form, in 1783, than two committees were appointed by Congress to report upon these two questions of land sales and of government.

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[1] Not all the speculators were able to keep what they acquired. Fifteen million acres of land in Kentucky were offered for sale in 1800 for non-payment of taxes. Channing, *History of the United States*, vol. iv, p. 91.

Thomas Jefferson was made chairman of both these committees. He was then forty years old and one of the most remarkable men in the country. Born on the frontier — his father from the upper middle class, his mother "a Randolph" — he had been trained to an outdoor life; but he was also a prodigy in his studies and entered William and Mary College with advanced standing at the age of eighteen. Many stories are told of his precocity and ability, all of which tend to forecast the later man of catholic tastes, omnivorous interest, and extensive but superficial knowledge; he was a strange combination of natural aristocrat and theoretical democrat, of philosopher and practical politician. After having been a student in the law office of George Wythe, and being a friend of Patrick Henry, Jefferson early espoused the cause of the Revolution, and it was his hand that drafted the Declaration of Independence. He then resigned from Congress to assist in the organization of government in his own State. For two years and a half he served in the Virginia Assembly and brought about the repeal of the law of entailment, the abolition of primogeniture, the recognition of freedom of conscience, and the encouragement of education. He was Governor of Virginia for two years and then, having declined reëlection, returned to Congress in 1783. There, among his other accomplishments, as chairman of the committee, he reported the Treaty of Peace and, as chairman of another committee, devised and persuaded Congress to adopt a national system of coinage which in its essentials is still in use.

It is easy to criticize Jefferson and to pick flaws in the things that he said as well as in the things that he did, but practically every one admits that he was closely in touch with the course of events and understood the temper of his contemporaries. In this period of transition from the old order to the new, he seems to have expressed the genius of American institutions better than almost any other man of his generation. He possessed a quality that enabled him, in the Declaration of Independence, to give voice to the hopes and aspirations of a rising nationality and that enabled him in his own State to bring about so many reforms.

Just how much actual influence Thomas Jefferson had in the framing of the American land policy is not clear. Although the draft of the committee report in 1784 is in Jefferson's handwriting, it is altogether probable that more credit is to be given to Thomas Hutchins, the Geographer of the United States, and to William Grayson of Virginia, especially for the final form which the measure took; for Jefferson retired from the chairmanship and had already gone to Europe when the Land Ordinance was adopted by Congress in 1785. This ordinance has been superseded by later enactments, to which references are usually made; but the original ordinance is one of the great pieces of American legislation, for it contained the fundamentals of the American land system which, with the modifications experience has introduced, has proved to be permanently workable and which has been envied and in several instances copied by other countries. Like almost all successful institutions of that sort, the Land Ordinance of 1785 was not an immediate creation but was a development out of former practices and customs and was in the nature of a compromise. Its essential features were the method of survey and the process for the sale of land. New England, with its town system, had in the course of its expansion been accustomed to proceed in an orderly method but on a relatively small scale. The South, on the other hand, had granted lands on a larger scale and had permitted individual selection in a haphazard manner. The plan which Congress adopted was that of the New England survey with the Southern method of extensive holdings. The system is repellent in its rectangular orderliness, but it made the process of recording titles easy and complete, and it was capable of indefinite expansion. These were matters of cardinal importance, for in the course of one hundred and forty years the United States was to have under its control nearly two thousand million acres of land.

The primary feature of the land policy was the orderly survey in advance of sale. In the next place the township was taken as the unit, and its size was fixed at six miles square. Provision was then made for the sale of townships alternately entire and by sections of one mile square, or 640 acres each. In every township a section was reserved for educational purposes; that is, the land was to be disposed of and the proceeds used for the development of public schools in that region. And, finally, the United States reserved four sections in the center of each township to be disposed of at a later time. It was expected that a great increase in the value of the land would result, and it was proposed that the Government should reap a part of the profits.

It is evident that the primary purpose of the public land policy as first developed was to acquire revenue for the Government; but it was also evident that there was a distinct purpose of encouraging settlement. The two were not incompatible, but the greater interest of the Government was in obtaining a return for the property.

The other committee of which Jefferson was chairman made its report of a plan for the government of the western territory upon the very day that the Virginia cession was finally accepted, March 1, 1784; and with some important modifications Jefferson's ordinance, or the Ordinance of 1784 as it was commonly called, was ultimately adopted. In this case Jefferson rendered a service similar to that of framing the Declaration of Inpendence. His plan was somewhat theoretical and visionary, but largely practical, and it was constructive work of a high order, displaying not so much originality as sympathetic appreciation of what had already been done and an instinctive forecast of future development. Jefferson seemed to be able to gather up ideas, some conscious and some latent in men's minds, and to express them in a form that was generally acceptable.

It is interesting to find in the Articles of Confederation (Article XI) that, "Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same unless such admission be agreed to by nine States." The real importance of this article lay in the suggestion of an enlargement of the Confederation. The Confederation was never intended to be a union of only thirteen States. Before the cession of their western claims it seemed to be inevitable that some of the States should be broken up into several units. At the very time that the formation of the Confederation was under discussion Vermont issued a declaration of independence from New York and New Hampshire, with the expectation of being admitted into the Union. It was impolitic to recognize the appeal at that time, but it seems to have been generally understood that sooner or later Vermont would come in as a full-fledged State.

It might have been a revolutionary suggestion by Maryland, when the cession of western lands was under discussion, that Congress should have sole power to fix the western boundaries of the States, but her further proposal was not even regarded as radical, that Congress should "lay out the land beyond the boundaries so ascertained into separate and independent states." It seems to have been taken as a matter of course in the procedure of Congress and was accepted by the States. But the idea was one thing; its carrying out was quite another. Here was a great extent of western territory which would be valuable only as it could be sold to prospective settlers. One of the first things these settlers would demand was protection — protection against the Indians, possibly also against the British and the Spanish, and protection in their ordinary civil life. The former was a detail of military organization and was in due time provided by the establishment of military forts and garrisons; the latter was the problem which Jefferson's committee was attempting to solve.

The Ordinance of 1784 disregarded the natural physical features of the western country and, by degrees of latitude and meridians of longitude, arbitrarily divided the public domain into rectangular districts, to the first of which the following names were applied: Sylvania, Michigania, Cherronesus, Assenisipia, Metropotamia, Illinoia, Saratoga, Washington, Polypotamia, Pelisipia. The amusement which this absurd and thoroughly Jeffersonian nomenclature is bound to cause ought not to detract from the really important features of the Ordinance. In each of the districts into which the country was divided the settlers might be authorized by Congress, for the purpose of establishing a temporary government, to adopt the constitution and laws of any one of the original States. When any such area should have twenty thousand free inhabitants it might receive authority from Congress to establish a permanent constitution and government and should be entitled to a representative in Congress with the right of debating but not of voting. And finally, when the inhabitants of any one of these districts should equal in number those of the least populous of the thirteen original States, their delegates should be admitted into Congress on an equal footing.

Jefferson's ordinance, though adopted, was never put into operation. Various explanations have been offered for this failure to give it a fair trial. It has been said that Jefferson himself was to blame. In the original draft of his ordinance Jefferson had provided for the abolition of slavery in the new States after the year 1800, and when Congress refused to accept this clause Jefferson, in a manner quite characteristic, seemed to lose all interest in the plan. There were, however, other objections, for there were those who felt that it was somewhat indefinite to promise admission into the Confederation of certain sections of the country as soon as their population should equal in number that of the least populous of the original States. If the original States should increase in population to any extent, the new States might never be admitted.

But on the other hand, if from any cause the population of one of the smaller States should suddenly decrease, might not the resulting influx of new States prove dangerous?

But the real reason why the ordinance remained a dead letter was that, while it fixed the limits within which local governments might act, it left the creation of those governments wholly to the future. At Vincennes, for example, the ordinance made no change in the political habits of the people. "The local government bowled along merrily under this system. There was the greatest abundance of government, for the more the United States neglected them the more authority their officials assumed."[1] Nor could the ordinance operate until settlers became numerous. It was partly, indeed, to hasten settlement that the Ordinance of 1785 for the survey and sale of the public lands was passed.[2]

In the meantime efforts were being made by Congress to improve the unsatisfactory ordinance for the government of the West. Committees were appointed, reports were made, and at intervals of weeks or months the subject was considered. Some amendments were actually adopted, but Congress, notoriously inefficient, hesitated to undertake a fundamental revision of the ordinance. Then, suddenly, in July, 1787, after a brief period of adjournment, Congress took up this subject and within a week adopted the now famous Ordinance of 1787.

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[1] Jacob Piat Dunn, Jr., *Indiana: A Redemption from Slavery*, 1888.

[2] Although the machinery was set in motion, by the appointment of men and the beginning of work, it was not until 1789 that the survey of the first seven ranges of townships was completed and the land offered for sale.

The stimulus which aroused Congress to activity seems to have come from the Ohio Company. From the very beginning of the public domain there was a strong sentiment in favor of using western land for settlement by Revolutionary soldiers. Some of these lands had been offered as bounties to encourage enlistment, and after the war the project of soldiers' settlement in the West was vigorously agitated. The Ohio Company of Associates was made up of veterans of the Revolution, who were looking for homes in the West, and of other persons who were willing to support a worthy cause by a subscription which might turn out to be a good investment. The company wished to buy land in the West, and Congress had land which it wished to sell. Under such circumstances it was easy to strike a bargain. The land, as we have seen, was roughly estimated at one dollar an acre; but, as the company wished to purchase a million acres, it demanded and obtained wholesale rates of two-thirds of the usual price. It also obtained the privilege of paying at least a portion in certificates of Revolutionary indebtedness, some of which were worth about twelve and a half cents on the dollar. Only a little calculation is required to show that a large quantity of land was therefore sold at about eight or nine cents an acre. It was in connection with this land sale that the Ordinance of 1787 was adopted.

The promoter of this enterprise undertaken by the Ohio Company was Manasseh Cutler of Ipswich, Massachusetts, a clergyman by profession who had served as a chaplain in the Revolutionary War. But his interests and activities extended far beyond the bounds of his profession. When the people of his parish were without proper medical advice he applied himself to the study and practice of medicine. At about the same time he took up the study of botany, and because of his describing several hundred species of plants he is regarded as the pioneer botanist of New England. His next interest seems to have grown out of his Revolutionary associations, for it centered in this project for settlement of the West, and he was appointed the agent of the Ohio Company. It was in this capacity that he had come to New York and made the bargain with Congress which has just been described. Cutler must have been a good lobbyist, for Congress was not an efficient body, and unremitting labor, as well as diplomacy, was required for so large and important a matter. Two things indicate his method of procedure. In the first place he found it politic to drop his own candidate for the governorship of the new territory and to endorse General Arthur St. Clair, then President of Congress. And in the next place he accepted the suggestion of Colonel William Duer for the formation of another company, known as the Scioto Associates, to purchase five million acres of land on similar terms, "but that it should be kept a profound secret." It was not an accident that Colonel Duer was Secretary of th Board of the Treasury through whom these purchases were made, nor that associated with him in this speculation were "a number of the principal characters in the city." These land deals were completed afterwards, but there is little doubt that there was a direct connection between them and the adoption of the ordinance of government.

The Ordinance of 1787 was so successful in its working and its renown became so great that claims of authorship, even for separate articles, have been filed in the name of almost every person who had the slightest excuse for being considered. Thousands of pages have been written in eulogy and in dispute, to the helpful clearing up of some points and to the obscuring of others. But the authorship of this or of that clause is of much less importance than the scope of the document as a working plan of government. As such the Ordinance of 1787 owes much to Jefferson's Ordinance of 1784. Under the new ordinance a governor and three judges were to be appointed who, along with their other functions, were to select such laws as they thought best from the statute books of all the States. The second stage in self-government would be reached when the population contained five thousand free men of age; then the people were to have a representative legislature with the usual privilege of making their own laws. Provision was made for dividing the whole region northwest of the Ohio River into three or four or five districts and the final stage of government was reached when any one of these districts had sixty thousand free inhabitants, for it might then establish its own constitution and government and be admitted into the Union on an equal footing with the original States.

The last-named provision for admission into the Union, being in the nature of a promise for the future, was not included in the body of the document providing for the government, but was contained in certain "articles of compact, between the original States and the people and States in the said territory, [which should] forever remain unalterable, unless by common consent." These articles of compact were in general similar to the bills of rights in State Constitutions; but one of them found no parallel in any State Constitution. Article VI reads: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted." This has been hailed as a farsighted, humanitarian measure, and it is quite true that many of the leading men, in the South as well as in the North, were looking forward to the time when slavery would be abolished. But the motives predominating at the time were probably more nearly represented by Grayson, who wrote to James Monroe, three weeks after the ordinance was passed: "The clause respecting slavery was agreed to by the southern members for the purpose of preventing tobacco and indigo from being made on the northwest side of the Ohio, as well as for several other political reasons."

It is over one hundred and thirty years since the Ordinance of 1787 was adopted, during which period more than thirty territories of the United States have been organized, and there has never been a time when one or more territories were not under Congressional supervision, so that the process of legislative control has been continuous. Changes have been made from time to time in order to adapt the territorial government to changed conditions, but for fifty years the Ordinance of 1787 actually remained in operation, and even twenty years later it was specifically referred to by statute. The principles of territorial government today are identical with those of 1787, and those principles comprise the largest measure of local self-government compatible with national control, a gradual extension of self-government to the people of a territory, and finally complete statehood and admission into the Union on a footing of equality with the other States.

In 1825, when the military occupation of Oregon was suggested in Congress, Senator Dickerson of New Jersey objected, saying, "We have not adopted a system of colonization and it is to be hoped we never shall." Yet that is just what America has always had. Not only were the first settlers on the Atlantic coast colonists from Europe; but the men who went to the frontier were also colonists from the Atlantic seaboard. And the men who settled the States in the West were colonists from the older communities. The Americans had so recently asserted their independence that they regarded the name of colony as not merely indicating dependence but as implying something of inferiority and even of reproach. And when the American colonial system was being formulated in 1783–87 the word "Colony" was not used. The country under consideration was the region west of the Alleghany Mountains and in particular the territory north and west of the Ohio River and, being so referred to in the documents, the word "Territory" became the term applied to all the colonies.

The Northwest Territory increased so rapidly in population that in 1800 it was divided into two districts, and in 1802 the eastern part was admitted into the Union as the State of Ohio. The rest of the territory was divided in 1805 and again in 1809; Indiana was admitted as a State in 1816 and Illinois in 1818. So the process has gone on. There were thirteen original States and six more have become members of the Union without having been through the status of territories, making nineteen in all; while twenty-nine States have developed from the colonial stage. The incorporation of the colonies into the Union is not merely a political fact; the inhabitants of the colonies become an integral part of the parent nation and in turn become the progenitors of new colonies. If such a process be long continued, the colonies will eventually outnumber the parent States, and the colonists will outnumber the citizens of the original States and will themselves become the nation. Such has been the history of the United States and its people. By 1850, indeed, one-half of the population of the United States was living west of the Alleghany Mountains, and at the present time approximately seventy per cent are to be found in the West.

The importance of the Ordinance of 1787 was hardly overstated by Webster in his famous debate with Hayne when he said: "We are accustomed . . . to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus;

but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked and lasting character than the Ordinance of 1787." While improved means of communication and many other material ties have served to hold the States of the Union together, the political bond was supplied by the Ordinance of 1787, which inaugurated the American colonial system.

CHAPTER V

DARKNESS BEFORE DAWN

JOHN FISKE summed up the prevailing impression of the government of the Confederation in the title to his volume, *The Critical Period of American History*. "The period of five years," says Fiske, "following the peace of 1783 was the most critical moment in all the history of the American people. The dangers from which we were saved in 1788 were even greater than were the dangers from which we were saved in 1865." Perhaps the plight of the Confederation was not so desperate as he would have us believe, but it was desperate enough. Two incidents occurring between the signing of the preliminary terms of peace and the definitive treaty reveal the danger in which the country stood. The main body of continental troops made up of militiamen and short-term volunteers — always prone to mutinous conduct — was collected at Newburg on the Hudson, watching the British in New York.

Word might come at any day that the treaty had been signed, and the army did not wish to be disbanded until certain matters had been settled — primarily the question of their pay. The officers had been promised half-pay for life, but nothing definite had been done toward carrying out the promise. The soldiers had no such hope to encourage them, and their pay was sadly in arrears. In December, 1782, the officers at Newburg drew up an address in behalf of themselves and their men and sent it to Congress. Therein they made the threat, thinly veiled, of taking matters into their own hands unless their grievances were redressed.

There is reason to suppose that back of this movement — or at least in sympathy with it — were some of the strongest men in civil as in military life, who, while not fomenting insurrection, were willing to bring pressure to bear on Congress and the States. Congress was unable or unwilling to act, and in March, 1783, a second paper, this time anonymous, was circulated urging the men not to disband until the question of pay had been settled and recommending a meeting of officers on the following day. If Washington's influence was not counted upon, it was at least hoped that he would not interfere; but as soon as he learned of what had been done he issued general orders calling for a meeting of officers on a later day, thus superseding the irregular meeting that had been suggested. On the day appointed the Commander-in-Chief appeared and spoke with so much warmth and feeling that his "little address . . . drew tears from many of the officers." He inveighed against the unsigned paper and against the methods that were talked of, for they would mean the disgrace of the army, and he appealed to the patriotism of the officers, promising his best efforts in their behalf. The effect was so strong that, when Washington withdrew, resolutions were adopted unanimously expressing their loyalty and their faith in the justice of Congress and denouncing the anonymous circular.

The general apprehension was not diminished by another incident in June. Some eighty troops of the Pennsylvania line in camp at Lancaster marched to Philadelphia and drew up before the State House, where Congress was sitting. Their purpose was to demand better treatment and the payment of what was owed to them. So far it was an orderly demonstration, although not in keeping with military regulations; in fact the men had broken away from camp under the lead of noncommissioned officers. But when they had been stimulated by drink the disorder became serious. The humiliating feature of the situation was that Congress could do nothing, even in self-protection. They appealed to the Pennsylvania authorities and, when assistance was refused, the members of Congress in alarm fled in the night and three days later gathered in the college building in Princeton.

Congress became the butt of many jokes, but men could not hide the chagrin they felt that their Government was so weak. The feeling deepened into shame when the helplessness of Congress was displayed before the world. Weeks and even months passed before a quorum could be obtained to ratify the treaty recognizing the independence of the United States and establishing peace. Even after the treaty was supposed to be in force the States disregarded its provisions and Congress could do nothing more than utter ineffective protests. But, most humiliating of all, the British maintained their military posts within the northwestern territory ceded to the United States, and Congress could only request them to retire. The Americans' pride was hurt and their pockets were touched as well, for an important issue at stake was the control of the lucrative fur trade. So resentment grew into anger; but the British held on, and the United States was powerless to make them withdraw. To make matters worse, the Confederation, for want of power to levy taxes, was facing bankruptcy, and Congress was unable to devise ways and means to avert a crisis.

The Second Continental Congress had come into existence in 1775. It was made up of delegations from the various colonies, appointed in more or less irregular ways, and had no more authority than it might assume and the various colonies were willing to concede; yet it was the central body under which the Revolution had been inaugurated and carried through to a successful conclusion. Had this Congress grappled firmly with the financial problem and forced through a system of direct taxation, the subsequent woes of the Confederation might have been mitigated and perhaps averted. In their enthusiasm over the Declaration of Independence the people — by whom is meant the articulate class consisting largely of the governing and commercial elements — would probably have accepted such a usurpation of authority. But with their lack of experience it is not surprising that the delegates to Congress did not appreciate the necessity of such radical action and so were unwilling to take the responsibility for it. They counted upon the goodwill and support of their constituents, which simmered down to a reliance upon voluntary grants from the States in response to appeals from Congress. These desultory grants proved to be so unsatisfactory that, in 1781, even before the Articles of Confederation had been ratified, Congress asked for a grant of additional power to levy a duty of five per cent *ad valorem* upon all goods imported into the United States, the revenue from which was to be applied to the discharge of the principal and interest on debts "contracted . . . for supporting the present war." Twelve States agreed, but Rhode Island, after some hesitation, finally rejected the measure in November, 1782.

The Articles of Confederation authorized a system of requisitions apportioned among the "several States in proportion to the value of all land within each State." But, as there was no power vested in Congress to force the States to comply, the situation was in no way improved when the Articles were ratified and put into operation. In fact, matters grew worse as Congress itself steadily lost ground in popular estimation, until it had become little better than a laughing-stock, and with the ending of the war its requests were more honored in the breach than in the observance. In 1782 Congress asked for $8,000,000 and the following year for $2,000,000 more, but by the end of 1783 less than $1,500,000 had been paid in.

In the same year, 1783, Congress made another attempt to remedy the financial situation by proposing the so-called Revenue Amendment, according to which a specific duty was to be laid upon certain articles and a general duty of five per cent *ad valorem* upon all other goods, to be in operation for twenty-five years. In addition to this it was proposed that for the same period of time $1,500,000 annually should be raised by requisitions, and the definite amount for each State was specified until "the rule of the Confederation" could be carried into practice. It was then proposed that the article providing for the proportion of requisitions should be changed so as to be based not upon land values but upon population, in estimating which slaves should be counted at three-fifths of their number. In the course of three years thereafter only two States accepted the proposals in full, seven agreed to them in part, and four failed to act at all. Congress in despair then made a further representation to the States upon the critical condition of the finances and accompanied this with an urgent appeal, which resulted in all the States except New York agreeing to the proposed impost. But the refusal of one State was sufficient to block the whole measure, and there was no further hope for a treasury that was practically bankrupt. In five years Congress had received less than two and one-half million dollars from requisitions, and for the fourteen months ending January 1, 1786, the income was at the rate of less than $375,000 a year, which was not enough, as a committee of Congress reported, "for the bare maintenance of the Federal Government on the most economical establishment and in time of profound peace." In fact, the income was not sufficient even to meet the interest on the foreign debt.

In the absence of other means of obtaining funds Congress had resorted early to the unfortunate expedient of issuing paper money based solely on the good faith of the States to redeem it. This fiat money held its value for some little time; then it began to shrink and, once started on the downward path, its fall was rapid. Congress tried to meet the emergency by issuing paper in increasing quantities until the inevitable happened: the paper money ceased to have any value and practically disappeared from circulation. Jefferson said that by the end of 1781 one thousand dollars of Continental scrip was worth about one dollar in specie.

The States had already issued paper money of their own, and their experience ought to have taught them a lesson, but with the coming of hard times after the war, they once more proposed by issuing paper to relieve the "scarcity of money" which was commonly supposed to be one of the principal evils of the day. In 1785 and 1786 paper money parties appeared in almost all the States. In some of these the conservative element was strong enough to prevent action, but in others the movement had to run its fatal course. The futility of what they were doing should have been revealed to all concerned by proposals seriously made that the paper money which was issued should depreciate at a regular rate each year until it should finally disappear.

The experience of Rhode Island is not to be regarded as typical of what was happening throughout the country but is, indeed, rather to be considered as exceptional. Yet it attracted widespread attention and revealed to anxious observers the dangers to which the country was subject if the existing condition of affairs were allowed to continue. The machinery of the State Government was captured by the paper-money party in the spring election of 1786. The results were disappointing to the adherents of the paper-money cause, for when the money was issued depreciation began at once, and those who tried to pay their bills discovered that a heavy discount was demanded. In response to indignant demands the legislature of Rhode Island passed an act to force the acceptance of paper money under penalty and thereupon tradesmen refused to make any sales at all — some closed their shops, and others tried to carry on business by exchange of wares. The farmers then retaliated by refusing to sell their produce to the shopkeepers, and general confusion and acute distress followed. It was mainly a quarrel between the farmers and the merchants, but it easily grew into a division between town and country, and there followed a whole series of town meetings and county conventions. The old line of cleavage was fairly well represented by the excommunication of a member of St. John's Episcopal Church of Providence for tendering bank notes, and the expulsion of a member of the Society of the Cincinnati for a similar cause.

The contest culminated in the case of Trevett *vs.* Weeden, 1786, which is memorable in the judicial annals of the United States. The legislature, not being satisfied with ordinary methods of enforcement, had provided for the summary trial of offenders without a jury before a court whose judges were removable by the Assembly and were therefore supposedly subservient to its wishes. In the case in question the Superior Court boldly declared the enforcing act to be unconstitutional, and for their contumacious behavior the judges were summoned before the legislature. They escaped punishment, but only one of them was reëlected to office.

Meanwhile disorders of a more serious sort, which startled the whole country, occurred in Massachusetts. It is doubtful if a satisfactory explanation ever will be found, at least one which will be universally accepted, as to the causes and origin of Shays' Rebellion in 1786. Some historians maintain that the uprising resulted primarily from a scarcity of money, from a shortage in the circulating medium; that, while the eastern counties were keeping up their foreign trade sufficiently at least to bring in enough metallic currency to relieve the stringency and could also use various forms of credit, the western counties had no such remedy. Others are inclined to think that the difficulties of the farmers in western Massachusetts were caused largely by the return to normal conditions after the extraordinarily good times between 1776 and 1780, and that it was the discomfort attending the process that drove them to revolt. Another explanation reminds one of present-day charges against undue influence of high financial circles, when it is insinuated and even directly charged that the rebellion was fostered by conservative interests who were trying to create a public opinion in favor of a more strongly organized government.

Whatever other causes there may have been, the immediate source of trouble was the enforced payment of indebtedness, which to a large extent had been allowed to remain in abeyance during the war. This postponement of settlement had not been merely for humanitarian reasons; it would have been the height of folly to collect when the currency was greatly depreciated. But conditions were supposed to have been restored to normal with the cessation of hostilities, and creditors were generally inclined to demand payment. These demands, coinciding with the heavy taxes, drove the people of western Massachusetts into revolt. Feeling ran high against lawyers who prosecuted suits for creditors, and this antagonism was easily transferred to the courts in which the suits were brought. The rebellion in Massachusetts accordingly took the form of a demonstration against the courts. A paper was carried from town to town in the County of Worcester, in which the signers promised to do their utmost "to prevent the sitting of the Inferior Court of Common Pleas for the county, or of any other court that should attempt to take property by distress."

The Massachusetts Legislature adjourned in July, 1786, without remedying the trouble and also without authorizing an issue of paper money which the hard-pressed debtors were demanding. In the months following mobs prevented the courts from sitting in various towns. A special session of the legislature was then called by the Governor but, when that special session had adjourned on the 18th of November, it might just as well have never met. It had attempted to remedy various grievances and had made concessions to the malcontents, but it had also passed measures to strengthen the hands of the Governor. This only seemed to inflame the rioters, and the disorders increased. After the lower courts a move was made against the State Supreme Court, and plans were laid for a concerted movement against the cities in the eastern part of the State. Civil war seemed imminent. The insurgents were led by Daniel Shays, an officer in the army of the Revolution, and the party of law and order was represented by Governor James Bowdoin, who raised some four thousand troops and placed them under the command of General Benjamin Lincoln.

The time of year was unfortunate for the insurgents, especially as December was unusually cold and there was a heavy snowfall. Shays could not provide stores and equipment and was unable to maintain discipline. A threatened attack on Cambridge came to naught for, when preparations were made to protect the city, the rebels began a disorderly retreat, and in the intense cold and deep snow they suffered severely, and many died from exposure. The center of interest then shifted to Springfield, where the insurgents were attempting to seize the United States arsenal. The local militia had already repelled the first attacks, and the appearance of General Lincoln with his troops completed the demoralization of Shays' army. The insurgents retreated, but Lincoln pursued relentlessly and broke them up into small bands, which then wandered about the country preying upon the unfortunate inhabitants. When spring came, most of them had been subdued or had taken refuge in the neighboring States.

Shays' Rebellion was fairly easily suppressed, even though it required the shedding of some blood. But it was the possibility of further outbreaks that destroyed men's peace of mind. There were similar disturbances in other States; and there the Massachusetts insurgents found sympathy, support, and finally a refuge. When the worst was over, and Governor Bowdoin applied to the neighboring States for help in capturing the last of the refugees, Rhode Island and Vermont failed to respond to the extent that might have been expected of them. The danger, therefore, of the insurrection spreading was a cause of deep concern. This feeling was increased by the impotence of Congress. The Government had sufficient excuse for intervention after the attack upon the national arsenal in Springfield. Congress, indeed, began to raise troops but did not dare to admit its purpose and offered as a pretext an expedition against the Northwestern Indians. The rebellion was over before any assistance could be given. The inefficiency of Congress and its lack of influence were evident. Like the disorders in Rhode Island, Shays' Rebellion in Massachusetts helped to bring about a reaction and strengthened the conservative movement for reform.

These untoward happenings, however, were only symptoms: the causes of the trouble lay far deeper. This fact was recognized even in Rhode Island, for at least one of the conventions had passed resolutions declaring that, in considering the condition of the whole country, what particularly concerned them was the condition of trade. Paradoxical as it may seem, the trade and commerce of the country were already on the upward grade and prosperity was actually returning. But prosperity is usually a process of slow growth and is seldom recognized by the community at large until it is well established. Farsighted men forecast the coming of good times in advance of the rest of the community, and prosper accordingly. The majority of the people know that prosperity has come only when it is unmistakably present, and some are not aware of it until it has begun to go. If that be true in our day, much more was it true in the eighteenth century, when means of communication were so poor that it took days for a message to go from Boston to New York and weeks for news to get from Boston to Charleston. It was a period of adjustment, and as we look back after the event we can see that the American people were adapting themselves with remarkable skill to the new conditions. But that was not so evident to the men who were feeling the pinch of hard times, and when all the attendant circumstances, some of which have been described, are taken into account, it is not surprising that commercial depression should be one of the strongest influences in, and the immediate occasion of, bringing men to the point of willingness to attempt some radical changes.

The fact needs to be reiterated that the people of the United States were largely dependent upon agriculture and other forms of extractive industry, and that markets for the disposal of their goods were an absolute necessity. Some of the States, especially New England and the Middle States, were interested in the carrying trade, but all were concerned in obtaining markets. On account of jealousy interstate trade continued a precarious existence and by no means sufficed to dispose of the surplus products, so that foreign markets were necessary. The people were especially concerned for the establishment of the old trade with the West India Islands, which had been the mainstay of their prosperity in colonial times; and after the British Government, in 1783, restricted that trade to British vessels, many people in the United States were attributing hard times to British malignancy. The only action which seemed possible was to force Great Britain in particular, but other foreign countries as well, to make such trade agreements as the prosperity of the United States demanded. The only hope seemed to lie in a commercial policy of reprisal which would force other countries to open their markets to American goods. Retaliation was the dominating idea in the foreign policy of the time. So in 1784 Congress made a new recommendation to the States, prefacing it with an assertion of the importance of commerce, saying: "The fortune of every Citizen is interested in the success thereof; for it is the constant source of wealth and incentive to industry; and the value of our produce and our land must ever rise or fall in proportion to the prosperous or adverse state of trade."

And after declaring that Great Britain had "adopted regulations destructive of our commerce with her West India Islands," it was further asserted: "Unless the United States in Congress assembled shall be vested with powers competent to the protection of commerce, they can never command reciprocal advantages in trade." It was therefore proposed to give to Congress for fifteen years the power to prohibit the importation or exportation of goods at American ports except in vessels owned by the people of the United States or by the subjects of foreign governments having treaties of commerce with the United States. This was simply a request for authorization to adopt navigation acts. But the individual States were too much concerned with their own interests and did not or would not appreciate the rights of the other States or the interests of the Union as a whole. And so the commercial amendment of 1784 suffered the fate of all other amendments proposed to the Articles of Confederation. In fact only two States accepted it.

It usually happens that some minor occurrence, almost unnoticed at the time, leads directly to the most important consequences. And an incident in domestic affairs started the chain of events in the United States that ended in the reform of the Federal Government. The rivalry and jealousy among the States had brought matters to such a pass that either Congress must be vested with adequate powers or the Confederation must collapse. But the Articles of Confederation provided no remedy, and it had been found that amendments to that instrument could not be obtained. It was necessary, therefore, to proceed in some extra-legal fashion. The Articles of Confederation specifically forbade treaties or alliances between the States unless approved by Congress. Yet Virginia and Maryland, in 1785, had come to a working agreement regarding the use of the Potomac River, which was the boundary line between them. Commissioners representing both parties had met at Alexandria and soon adjourned to Mount Vernon, where they not only reached an amicable settlement of the immediate questions before them but also discussed the larger subjects of duties and commercial matters in general. When the Maryland legislature came to act on the report, it proposed that Pennsylvania and Delaware should be invited to join with them in formulating a common commercial policy. Virginia then went one step farther and invited all the other States to send commissioners to a general trade convention and later announced Annapolis as the place of meeting and set the time for September, 1786.

This action was unconstitutional and was so recognized, for James Madison notes that "from the Legislative Journals of Virginia it appears, that a vote to apply for a sanction of Congress was followed by a vote against a communication of the Compact to Congress," and he mentions other similar violations of the central authority. That this did not attract more attention was probably due to the public interest being absorbed just at that time by the paper money agitation. Then, too, the men concerned seem to have been willing to avoid publicity. Their purposes are well brought out in a letter of Monsieur Louis Otto, French Chargé d'Affaires, written on October 10, 1786, to the Comte de Vergennes, Minister for Foreign Affairs, though their motives may be somewhat misinterpreted.

> Although there are no nobles in America, there is a class of men denominated "gentlemen," who, by reason of their wealth, their talents, their education, their families, or the offices they hold, aspire to a preeminence which the people refuse to grant them; and, although many of these men have betrayed the interests of their order to gain popularity, there reigns among them a connection so much the more intimate as they almost all of them dread the efforts of the people to despoil them of their possessions, and, moreover, they are creditors, and therefore interested in strengthening the government, and watching over the execution of the laws.
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> These men generally pay very heavy taxes, while the small proprietors escape the vigilance of the collectors.

The majority of them being merchants, it is for their interest to establish the credit of the United States in Europe on a solid foundation by the exact payment of debts, and to grant to congress powers extensive enough to compel the people to contribute for this purpose. The attempt, my lord, has been vain, by pamphlets and other publications, to spread notions of justice and integrity, and to deprive the people of a freedom which they have so misused. By proposing a new organization of the federal government all minds would have been revolted; circumstances ruinous to the commerce of America have happily arisen to furnish the reformers with a pretext for introducing innovations.

They represented to the people that the American name had become opprobrious among all the nations of Europe; that the flag of the United States was everywhere exposed to insults and annoyance; the husbandman, no longer able to export his produce freely, would soon be reduced to want; it was high time to retaliate, and to convince foreign powers that the United States would not with impunity suffer such a violation of the freedom of trade, but that strong measures could be taken only with the consent of the thirteen states, and that congress, not having the necessary powers, it was essential to form a general assembly instructed to present to congress the plan for its adoption, and to point out the means of carrying it into execution.

The people, generally discontented with the obstacles in the way of commerce, and scarcely suspecting the secret motives of their opponents, ardently embraced this measure, and appointed commissioners, who were to assemble at Annapolis in the beginning of September.

> The authors of this proposition had no hope, nor even desire, to see the success of this assembly of commissioners, which was only intended to prepare a question much more important than that of commerce. The measures were so well taken that at the end of September no more than five states were represented at Annapolis, and the commissioners from the northern states tarried several days at New York in order to retard their arrival.
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> The states which assembled, after having waited nearly three weeks, separated under the pretext that they were not in sufficient numbers to enter on business, and, to justify this dissolution, they addressed to the different legislatures and to congress a report, the translation of which I have the honor to enclose to you.[1]

Among these "men denominated 'gentlemen'" to whom the French Chargé d'Affaires alludes, was James Madison of Virginia. He was one of the younger men, unfitted by temperament and physique to be a soldier, who yet had found his opportunity in the Revolution. Graduating in 1771 from Princeton, where tradition tells of the part he took in patriotic demonstrations on the campus — characteristic of students then as now — he had thrown himself heart and soul into the American cause. He was a member of the convention to frame the first State Constitution for Virginia in 1776, and from that time on, because of his ability, he was an important figure in the political history of his State and of his country. He was largely responsible for bringing about the conference between Virginia and Maryland and for the subsequent steps resulting in the trade convention at Annapolis. And yet Madison seldom took a conspicuous part, preferring to remain in the background and to allow others to appear as the leaders. When the Annapolis Convention assembled, for example, he suffered Alexander Hamilton of New York to play the leading rôle.

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[1] Quoted by Bancroft, *History of the Formation of the Constitution,* vol. ii, Appendix, pp. 399–400.

Hamilton was then approaching thirty years of age and was one of the ablest men in the United States. Though his best work was done in later years, when he proved himself to be perhaps the most brilliant of American statesmen, with an extraordinary genius for administrative organization, the part that he took in the affairs of this period was important. He was small and slight in person but with an expressive face, fair complexion, and cheeks of "almost feminine rosiness." The usual aspect of his countenance was thoughtful and even severe, but in conversation his face lighted up with a remarkably attractive smile. He carried himself erectly and with dignity, so that in spite of his small figure, when he entered a room "it was apparent, from the respectful attention of the company, that he was a distinguished person." A contemporary, speaking of the opposite and almost irreconcilable traits of Hamilton's character, pronounced a bust of him as giving a complete exposition of his character: "Draw a handkerchief around the mouth of the bust, and the remnant of the countenance represents fortitude and intrepidity such as we have often seen in the plates of Roman heroes. Veil in the same manner the face and leave the mouth and chin only discernible, and all this fortitude melts and vanishes into almost feminine softness."

Hamilton was a leading spirit in the Annapolis Trade Convention and wrote the report that it adopted. Whether or not there is any truth in the assertion of the French chargé that Hamilton and others thought it advisable to disguise their purposes, there is no doubt that the Annapolis Convention was an all-important step in the progress of reform, and its recommendation was the direct occasion of the calling of the great convention that framed the Constitution of the United States.

The recommendation of the Annapolis delegates was in the form of a report to the legislatures of their respective States, in which they referred to the defects in the Federal Government and called for "a convention of deputies from the different states for the special purpose of entering into this investigation and digesting a Plan for supplying such defects." Philadelphia was suggested as the place of meeting, and the time was fixed for the second Monday in May of the next year.

Several of the States acted promptly upon this recommendation and in February, 1787, Congress adopted a resolution accepting the proposal and calling the convention "for the sole and express purpose of revising the Articles of Confederation and reporting . . . such alterations . . . as shall . . . render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union." Before the time fixed for the meeting of the Philadelphia Convention, or shortly after that date, all the States had appointed deputies with the exception of New Hampshire and Rhode Island. New Hampshire was favorably disposed toward the meeting but, owing to local conditions, failed to act before the Convention was well under way. Delegates, however, arrived in time to share in some of the most important proceedings. Rhode Island alone refused to take part, although a letter signed by some of the prominent men was sent to the Convention pledging their support.

CHAPTER VI

THE FEDERAL CONVENTION

THE body of delegates which met in Philadelphia in 1787 was the most important convention that ever sat in the United States. The Confederation was a failure, and if the new nation was to be justified in the eyes of the world, it must show itself capable of effective union. The members of the Convention realized the significance of the task before them, which was, as Madison said, "now to decide forever the fate of Republican government." Gouverneur Morris, with unwonted seriousness, declared: "The whole human race will be affected by the proceedings of this Convention." James Wilson spoke with equal gravity: "After the lapse of six thousand years since the creation of the world America now presents the first instance of a people assembled to weigh deliberately and calmly and to decide leisurely and peaceably upon the form of government by which they will bind themselves and their posterity."

Not all the men to whom this undertaking was entrusted, and who were taking themselves and their work so seriously, could pretend to social distinction, but practically all belonged to the upper ruling class. At the Indian Queen, a tavern on Fourth Street between Market and Chestnut, some of the delegates had a hall in which they lived by themselves. The meetings of the Convention were held in an upper room of the State House. The sessions were secret; sentries were placed at the door to keep away all intruders; and the pavement of the street in front of the building was covered with loose earth so that the noises of passing traffic should not disturb this august assembly. It is not surprising that a tradition grew up about the Federal Convention which hedged it round with a sort of awe and reverence. Even Thomas Jefferson referred to it as "an assembly of demigods." If we can get away from the glamour which has been spread over the work of the Fathers of the Constitution and understand that they were human beings, even as we are, and influenced by the same motives as other men, it may be possible to obtain a more faithful impression of what actually took place.

Since representation in the Convention was to be by States, just as it had been in the Continental Congress, the presence of delegations from a majority of the States was necessary for organization. It is a commentary upon the times, upon the difficulties of travel, and upon the leisurely habits of the people, that the meeting which had been called for the 14th of May could not begin its work for over ten days. The 25th of May was stormy, and only twenty-nine delegates were on hand when the Convention organized. The slender attendance can only partially be attributed to the weather, for in the following three months and a half of the Convention, at which fifty-five members were present at one time or another, the average attendance was only slightly larger than that of the first day. In such a small body personality counted for much, in ways that the historian can only surmise. Many compromises of conflicting interests were reached by informal discussion outside of the formal sessions. In these small gatherings individual character was often as decisive as weighty argument.

George Washington was unanimously chosen as the presiding officer of the Convention. He sat on a raised platform, in a large, carved, high-backed chair, from which his commanding figure and dignified bearing exerted a potent influence on the assembly, an influence enhanced by the formal courtesy and stately intercourse of the times. Washington was the great man of his day and the members not only respected and admired him; some of them were actually afraid of him. When he rose to his feet he was almost the Commander-in-Chief again. There is evidence to show that his support or disapproval was at times a decisive factor in the deliberations of the Convention.

Virginia, which had taken a conspicuous part in the calling of the Convention, was looked to for leadership in the work that was to be done. James Madison, next to Washington the most important member of the Virginia delegation, was the very opposite of Washington in many respects — small and slight in stature, inconspicuous in dress as in figure, modest and retiring, but with a quick, active mind and wide knowledge obtained both from experience in public affairs and from extensive reading. Washington was the man of action; Madison, the scholar in politics. Madison was the younger by nearly twenty years, but Washington admired him greatly and gave him the support of his influence — a matter of no little consequence, for Madison was the leading expert worker of the Convention in the business of framing the Constitution.

Governor Edmund Randolph, with his tall figure, handsome face, and dignified manner, made an excellent impression in the position accorded to him of nominal leader of the Virginia delegation. Among others from the same State who should be noticed were the famous lawyers, George Wythe and George Mason.

Among the deputies from Pennsylvania the foremost was James Wilson, the "Caledonian," who probably stood next in importance in the Convention to Madison and Washington. He had come to America as a young man just when the troubles with England were beginning and by sheer ability had attained a position of prominence. Several times a member of Congress, a signer of the Declaration of Independence, he was now regarded as one of the ablest lawyers in the United States. A more brilliant member of the Pennsylvania delegation, and one of the most brilliant of the Convention, was Gouverneur Morris, who shone by his cleverness and quick wit as well as by his wonderful command of language. But Morris was admired more than he was trusted; and, while he supported the efforts for a strong government, his support was not always as great a help as might have been expected. A crippled arm and a wooden leg might detract from his personal appearance, but they could not subdue his spirit and audacity.[1]

There were other prominent members of the Pennsylvania delegation, but none of them took an important part in the Convention, not even the aged Benjamin Franklin, President of the State. At the age of eighty-one his powers were failing, and he was so feeble that his colleague Wilson read his speeches for him. His opinions were respected, but they do not seem to have carried much weight.

Other noteworthy members of the Convention, though hardly in the first class, were the handsome and charming Rufus King of Massachusetts, one of the coming men of the country, and Nathaniel

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[1] There is a story which illustrates admirably the audacity of Morris and the austere dignity of Washington. The story runs that Morris and several members of the Cabinet were spending an evening at the President's house in Philadelphia, where they were discussing the absorbing question of the hour, whatever it may have been. "The President," Morris is said to have related on the following day, "was standing with his arms behind him — his usual position — his back to the fire. I started up and spoke, stamping, as I walked up and down, with my wooden leg; and, as I was certain I had the best of the argument, as I finished I stalked up to the President, slapped him on the back, and said, 'Ain't I right, General?' The President did not speak, but the majesty of the American people was before me. Oh, his look! How I wished the floor would open and I could descend to the cellar! You know me," continued Mr. Morris, "and you know my eye would never quail before any other mortal." —W. T. Read, *Life and Correspondence of George Read* (1870) p. 441.

Gorham of the same State, who was President of Congress — a man of good sense rather than of great ability, but one whose reputation was high and whose presence was a distinct asset to the Convention. Then, too, there were the delegates from South Carolina: John Rutledge, the orator, General Charles Cotesworth Pinckney of Revolutionary fame, and his cousin, Charles Pinckney. The last named took a conspicuous part in the proceedings in Philadelphia but, so far as the outcome was concerned, left his mark on the Constitution mainly in minor matters and details.

The men who have been named were nearly all supporters of the plan for a centralized government. On the other side were William Paterson of New Jersey, who had been Attorney-General of his State for eleven years and who was respected for his knowledge and ability; John Dickinson of Delaware, the author of the *Farmer's Letters* and chairman of the committee of Congress that had framed the Articles of Confederation — able, scholarly, and sincere, but nervous, sensitive, and conscientious to the verge of timidity — whose refusal to sign the Declaration of Independence had cost him his popularity, though he was afterward returned to Congress and became president successively of

Delaware and of Pennsylvania; Elbridge Gerry of Massachusetts, a successful merchant, prominent in politics, and greatly interested in questions of commerce and finance; and the Connecticut delegates, forming an unusual trio, Dr. William Samuel Johnson, Roger Sherman, and Oliver Ellsworth. These men were fearful of establishing too strong a government and were at one time or another to be found in opposition to Madison and his supporters. They were not mere obstructionists, however, and while not constructive in the same way that Madison and Wilson were, they must be given some credit for the form which the Constitution finally assumed. Their greatest service was in restraining the tendency of the majority to overrule the rights of States and in modifying the desires of individuals for a government that would have been too strong to work well in practice.

Alexander Hamilton of New York, as one of the ablest members of the Convention, was expected to take an important part, but he was out of touch with the views of the majority. He was aristocratic rather than democratic and, however excellent his ideas may have been, they were too radical for his fellow delegates and found but little support. He threw his strength in favor of a strong government and was ready to aid the movement in whatever way he could. But within his own delegation he was outvoted by Robert Yates and John Lansing, and before the sessions were half over he was deprived of a vote by the withdrawal of his colleagues. Thereupon, finding himself of little service, he went to New York and returned to Philadelphia only once or twice for a few days at a time, and finally to sign the completed document. Luther Martin of Maryland was an able lawyer and the Attorney-General of his State; but he was supposed to be allied with undesirable interests, and it was said that he had been sent to the Convention for the purpose of opposing a strong government. He proved to be a tiresome speaker and his prosiness, when added to the suspicion attaching to his motives, cost him much of the influence which he might otherwise have had.

All in all, the delegates to the Federal Convention were a remarkable body of men. Most of them had played important parts in the drama of the Revolution; three-fourths of them had served in Congress, and practically all were persons of note in their respective States and had held important public positions. They may not have been the "assembly of demigods" which Jefferson called them, for another contemporary insisted "that twenty assemblies of equal number might be collected equally respectable both in point of ability, integrity, and patriotism." Perhaps it would be safer to regard the Convention as a fairly representative body, which was of a somewhat higher order than would be gathered together today, because the social conditions of those days tended to bring forward men of a better class, and because the seriousness of the crisis had called out leaders of the highest type.

Two or three days were consumed in organizing the Convention — electing officers, considering the delegates' credentials, and adopting rules of procedure; and when these necessary preliminaries had been accomplished the main business was opened with the presentation by the Virginia delegation of a series of resolutions providing for radical changes in the machinery of the Confederation. The principal features were the organization of a legislature of two houses proportional to population and with increased powers, the establishment of a separate executive, and the creation of an independent judiciary. This was in reality providing for a new government and was probably quite beyond the ideas of most of the members of the Convention, who had come there under instructions and with the expectation of revising the Articles of Confederation. But after the Virginia Plan had been the subject of discussion for two weeks so that the members had become a little more accustomed to its proposals, and after minor modifications had been made in the wording of the resolutions, the Convention was won over to its support. To check this drift toward radical change the opposition headed by New Jersey and Connecticut presented the so-called New Jersey Plan, which was in sharp contrast to the Virginia Resolutions, for it contemplated only a revision of the Articles of Confederation, but after a relatively short discussion, the Virginia Plan was adopted by a vote of seven States against four, with one State divided.

The dividing line between the two parties or groups in the Convention had quickly manifested itself. It proved to be the same line that had divided the Congress of the Confederation, the cleavage between the large States and the small States. The large States were in favor of representation in both houses of the legislature according to population, while the small States were opposed to any change which would deprive them of their equal vote in Congress, and though outvoted, they were not ready to yield. The Virginia Plan, and subsequently the New Jersey Plan, had first been considered in committee of the whole, and the question of "proportional representation," as it was then called, would accordingly come up again in formal session. Several weeks had been occupied by the proceedings, so that it was now near the end of June, and in general the discussions had been conducted with remarkably good temper. But it was evidently the calm before the storm. And the issue was finally joined when the question of representation in the two houses again came before the Convention. The majority of the States on the 29th of June once more voted in favor of proportional representation in the lower house. But on the question of the upper house, owing to a peculiar combination of circumstances — the absence of one delegate and another's change of vote causing the position of their respective States to be reversed or nullified — the vote on the 2d of July resulted in a tie. This brought the proceedings of the Convention to a standstill. A committee of one member from each State was appointed to consider the question, and, "that time might be given to the Committee, and to such as chose to attend to the celebration on the anniversary of Independence, the Convention adjourned" over the Fourth. The committee was chosen by ballot, and its composition was a clear indication that the small-State men had won their fight, and that a compromise would be effected.

It was during the debate upon this subject, when feeling was running high and when at times it seemed as if the Convention in default of any satisfactory solution would permanently adjourn, that Franklin proposed that "prayers imploring the assistance of Heaven . . . be held in this Assembly every morning." Tradition relates that Hamilton opposed the motion. The members were evidently afraid of the impression which would be created outside, if it were suspected that there were dissensions in the Convention, and the motion was not put to a vote.

How far physical conditions may influence men in adopting any particular course of action it is impossible to say. But just when the discussion in the Convention reached a critical stage, just when the compromise presented by the committee was ready for adoption or rejection, the weather turned from unpleasantly hot to being comfortably cool. And, after some little time spent in the consideration of details, on the 16th of July, the great compromise of the Constitution was adopted. There was no other that compared with it in importance. ✓ Its most significant features were that in the upper house each State should have an equal vote and that in the lower house representation should be apportioned on the basis of population, while direct taxation should follow the same proportion. The further proviso that money bills should originate in the lower house and should not be amended in the upper house was regarded by some delegates as of considerable importance, though others did not think so, and eventually the restriction upon amendment by the upper house was dropped.

There has long been a prevailing belief that an essential feature of the great compromise was the counting of only three-fifths of the slaves in enumerating the population. This impression is quite erroneous. It was one of the details of the compromise, but it had been a feature of the revenue amendment of 1783, and it was generally accepted as a happy solution of the difficulty that slaves possessed the attributes both of persons and of property. It had been included both in the amended Virginia Plan and in the New Jersey Plan; and when it was embodied in the compromise it was described as "the ratio recommended by Congress in their resolutions of April 18, 1783." A few months later, in explaining the matter to the Massachusetts convention, Rufus King said that, "This rule . . . was adopted because it was the language of all America." In reality the three-fifths rule was a mere incident in that part of the great compromise which declared that "representation should be proportioned according to direct taxation." As a further indication of the attitude of the Convention upon this point, an amendment to have the blacks counted equally with the whites was voted down by eight States against two.

With the adoption of the great compromise a marked difference was noticeable in the attitude of the delegates. Those from the large States were deeply disappointed at the result and they asked for an adjournment to give them time to consider what they should do. The next morning, before the Convention met, they held a meeting to determine upon their course of action. They were apparently afraid of taking the responsibility for breaking up the Convention, so they finally decided to let the proceedings go on and to see what might be the ultimate outcome. Rumors of these dissensions had reached the ears of the public, and it may have been to quiet any misgivings that the following inspired item appeared in several local papers: "So great is the unanimity, we hear, that prevails in the Convention, upon all great federal subjects, that it has been proposed to call the room in which they assemble Unanimity Hall."

On the other hand the effect of this great compromise upon the delegates from the small States was distinctly favorable. Having obtained equal representation in one branch of the legislature, they now proceeded with much greater willingness to consider the strengthening of the central government. Many details were yet to be arranged, and sharp differences of opinion existed in connection with the executive as well as with the judiciary. But these difficulties were slight in comparison with those which they had already surmounted in the matter of representation. By the end of July the fifteen resolutions of the original Virginia Plan had been increased to twenty-three, with many enlargements and amendments, and the Convention had gone as far as it could effectively in determining the general principles upon which the government should be formed. There were too many members to work efficiently when it came to the actual framing of a constitution with all the inevitable details that were necessary in setting up a machinery of government. Accordingly this task was turned over to a committee of five members who had already given evidence of their ability in this direction. Rutledge was made the chairman, and the others were Randolph, Gorham, Ellsworth, and Wilson. To give them time to perfect their work, on the 26th of July the Convention adjourned for ten days.

CHAPTER VII

FINISHING THE WORK

RUTLEDGE and his associates on the committee of detail accomplished so much in such a short time that it seems as if they must have worked day and night. Their efforts marked a distinct stage in the development of the Constitution. The committee left no records, but some of the members retained among their private papers drafts of the different stages of the report they were framing, and we are therefore able to surmise the way in which the committee proceeded. Of course the members were bound by the resolutions which had been adopted by the Convention and they held themselves closely to the general principles that had been laid down. But in the elaboration of details they seem to have begun with the Articles of Confederation and to have used all of that document that was consistent with the new plan of government. Then they made use of the New Jersey Plan, which had been put forward by the smaller States, and of a third plan which had been presented by Charles Pinckney; for the rest they drew largely upon the State Constitutions. By a combination of these different sources the committee prepared a document bearing a close resemblance to the present Constitution, although subjects were in a different order and in somewhat different proportions, which, at the end of ten days, by working on Sunday, they were able to present to the Convention. This draft of a constitution was printed on seven folio pages with wide margins for notes and emendations.

The Convention resumed its sessions on Monday, the 6th of August, and for five weeks the report of the committee of detail was the subject of discussion. For five hours each day, and sometimes for six hours, the delegates kept persistently at their task. It was midsummer, and we read in the diary of one of the members that in all that period only five days were "cool." Item by item, line by line, the printed draft of the Constitution was considered. It is not possible, nor is it necessary, to follow that work minutely; much of it was purely formal, and yet any one who has had experience with committee reports knows how much importance attaches to matters of phrasing. Just as the

Virginia Plan was made more acceptable to the majority by changes in wording that seem to us insignificant, so modifications in phrasing slowly won support for the draft of the Constitution.

The adoption of the great compromise, as we have seen, changed the whole spirit of the Convention. There was now an expectation on the part of the members that something definite was going to be accomplished, and all were concerned in making the result as good and as acceptable as possible. In other words, the spirit of compromise pervaded every action, and it is essential to remember this in considering what was accomplished.

One of the greatest weaknesses of the Confederation was the inefficiency of Congress. More than four pages, or three-fifths of the whole printed draft, were devoted to Congress and its powers. It is more significant, however, that in the new Constitution the legislative powers of the Confederation were transferred bodily to the Congress of the United States, and that the powers added were few in number, although of course of the first importance. The Virginia Plan declared that, in addition to the powers under the Confederation, Congress should have the right "to legislate in all cases to which the separate States are incompetent."

This statement was elaborated in the printed draft which granted specific powers of taxation, of regulating commerce, of establishing a uniform rule of naturalization, and at the end of the enumeration of powers two clauses were added giving to Congress authority:

> To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;
>
> And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers.

On the other hand, it was necessary to place some limitations upon the power of Congress. A general restriction was laid by giving to the executive a right of veto, which might be overruled, however, by a two-thirds vote of both houses. Following British tradition — yielding as it were to an inherited fear — these delegates in America were led to place the first restraint upon the exercise of congressional authority in connection with treason. The legislature of the United States was given the power to declare the punishment of treason; but treason itself was defined in the Constitution, and it was further asserted that a person could be convicted of treason only on the testimony of two witnesses, and that attainder of treason should not "work corruption of blood nor forfeiture except during the life of the person attainted." Arising more nearly out of their own experience was the prohibition of export taxes, of capitation taxes, and of the granting of titles of nobility.

While the committee of detail was preparing its report, the Southern members of that committee had succeeded in getting a provision inserted that navigation acts could be passed only by a two-thirds vote of both houses of the legislature. New England and the Middle States were strongly in favor of navigation acts for, if they could require all American products to be carried in American-built and American-owned vessels, they would give a great stimulus to the ship-building and commerce of the United States. They therefore wished to give Congress power in this matter on exactly the same terms that other powers were granted. The South, however, was opposed to this policy, for it wanted to encourage the cheapest method of shipping its raw materials. The South also wanted a larger number of slaves to meet its labor demands. To this need New England was not favorably disposed. To reconcile the conflicting interests of the two sections a compromise was finally reached. The requirement of a two-thirds vote of both houses for the passing of navigation acts which the Southern members had obtained was abandoned, and on the other hand it was determined that Congress should not be allowed to interfere with the importation of slaves for twenty years. This, again, was one of the important and conspicuous compromises of the Constitution. It is liable, however, to be misunderstood, for one should not read into the sentiment of the members of the Convention any of the later strong prejudice against slavery. There were some who objected on moral grounds to the recognition of slavery in the Constitution, and that word was carefully avoided by referring to "such Persons as any States now existing shall think proper to admit." And there were some who were especially opposed to the encouragement of that institution by permitting the slave trade, but the majority of the delegates regarded slavery as an accepted institution, as a part of the established order, and public sentiment on the slave trade was not much more emphatic and positive than it is now on cruelty to animals. As Ellsworth said, "The morality or wisdom of slavery are considerations belonging to the States themselves," and the compromise was nothing more or less than a bargain between the sections.

The fundamental weakness of the Confederation was the inability of the Government to enforce its decrees, and in spite of the increased powers of Congress, even including the use of the militia "to execute the laws of the Union," it was not felt that this defect had been entirely remedied. Experience under the Confederation had taught men that something more was necessary in the direction of restricting the States in matters which might interfere with the working of the central Government. As in the case of the powers of Congress, the Articles of Confederation were again resorted to and the restrictions which had been placed upon the States in that document were now embodied in the Constitution with modifications and additions. But the final touch was given in connection with the judiciary.

There was little in the printed draft and there is comparatively little in the Constitution on the subject of the judiciary. A Federal Supreme Court was provided for, and Congress was permitted, but not required, to establish inferior courts; while the jurisdiction of these tribunals was determined upon the general principles that it should extend to cases arising under the Constitution and laws of the United States, to treaties and cases in which foreigners and foreign countries were involved, and to controversies between States and citizens of different States. Nowhere in the document itself is there any word as to that great power which has been exercised by the Federal courts of declaring null and void laws or parts of laws that are regarded as in contravention to the Constitution. There is little doubt that the more important men in the Convention, such as Wilson, Madison, Gouverneur Morris, King, Gerry, Mason, and Luther Martin, believed that the judiciary would exercise this power, even though it should not be specifically granted. The nearest approach to a declaration of this power is to be found in a paragraph that was inserted toward the end of the Constitution. Oddly enough, this was a modification of a clause introduced by Luther Martin with quite another intent. As adopted it reads: "That this Constitution and the Laws of the United States . . . and all Treaties . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This paragraph may well be regarded as the keystone of the constitutional arch of national power. Its significance lies in the fact that the Constitution is regarded not as a treaty nor as an agreement between States, but as a law; and while its enforcement is backed by armed power, it is a law enforceable in the courts.

One whole division of the Constitution has been as yet barely referred to, and it not only presented one of the most perplexing problems which the Convention faced but one of the last to be settled — that providing for an executive. There was a general agreement in the Convention that there should be a separate executive. The opinion also developed quite early that a single executive was better than a plural body, but that was as far as the members could go with any degree of unanimity. At the outset they seemed to have thought that the executive would be dependent upon the legislature, appointed by that body, and therefore more or less subject to its control. But in the course of the proceedings the tendency was to grant greater and greater powers to the executive; in other words, he was becoming a figure of importance. No such office as that of President of the United States was then in existence. It was a new position which they were creating. We have become so accustomed to it that it is difficult for us to hark back to the time when there was no such officer and to realize the difficulties and the fears of the men who were responsible for creating that office.

The presidency was obviously modeled after the governorship of the individual States, and yet the incumbent was to be at the head of the Thirteen States. Rufus King is frequently quoted to the effect that the men of that time had been accustomed to considering themselves subjects of the British king. Even at the time of the Convention there is good evidence to show that some of the members were still agitating the desirability of establishing a monarchy in the United States. It was a common rumor that a son of George III was to be invited to come over, and there is reason to believe that only a few months before the Convention met Prince Henry of Prussia was approached by prominent people in this country to see if he could be induced to accept the headship of the States, that is, to become the king of the United States. The members of the Convention evidently thought that they were establishing something like a monarchy. As Randolph said, the people would see "the form at least of a little monarch," and they did not want him to have despotic powers. When the sessions were over, a lady asked Franklin: "Well, Doctor, what have we got, a republic or a monarchy?" "A republic," replied the doctor, "if you can keep it."

The increase of powers accruing to the executive office necessitated placing a corresponding check upon the exercise of those powers. The obvious method was to render the executive subject to impeachment, and it was also readily agreed that his veto might be overruled by a two-thirds vote of Congress; but some further safeguards were necessary, and the whole question accordingly turned upon the method of his election and the length of his term. In the course of the proceedings of the Convention, at several different times, the members voted in favor of an appointment by the national legislature, but they also voted against it. Once they voted for a system of electors chosen by the State legislatures and twice they voted against such a system. Three times they voted to reconsider the whole question. It is no wonder that Gerry should say: "We seem to be entirely at a loss."

So it came to the end of August, with most of the other matters disposed of and with the patience of the delegates worn out by the long strain of four weeks' close application. During the discussions it had become apparent to every one that an election of the President by the people would give a decided advantage to the large States, so that again there was arising the divergence between the large and small States. In order to hasten matters to a conclusion, this and all other vexing details upon which the Convention could not agree were turned over to a committee made up of a member from each State. It was this committee which pointed the way to a compromise by which the choice of the executive was to be entrusted to electors chosen in each State as its legislature might direct. The electors were to be equal in number to the State's representation in Congress, including both senators and representatives, and in each State they were to meet and to vote for two persons, one of whom should not be an inhabitant of that State. The votes were to be listed and sent to Congress, and the person who had received the greatest number of votes was to be President, provided such a number was a majority of all the electors. In case of a tie the Senate was to choose between the candidates and, if no one had a majority, the Senate was to elect "from the five highest on the list."

This method of voting would have given the large States a decided advantage, of course, in that they would appoint the greater number of electors, but it was not believed that this system would ordinarily result in a majority of votes being cast for one man. Apparently no one anticipated the formation of political parties which would concentrate the votes upon one or another candidate. It was rather expected that in the great majority of cases — "nineteen times in twenty," one of the delegates said — there would be several candidates and that the selection from those candidates would fall to the Senate, in which all the States were equally represented and the small States were in the majority. But since the Senate shared so many powers with the executive, it seemed better to transfer the right of "eventual election" to the House of Representatives, where each State was still to have but one vote. Had this scheme worked as the designers expected, the interests of large States and small States would have been reconciled, since in effect the large States would name the candidates and, "nineteen times in twenty," the small States would choose from among them.

Apparently the question of a third term was never considered by the delegates in the Convention. The chief problem before them was the method of election. If the President was to be chosen by the legislature, he should not be eligible to reëlection. On the other hand, if there was to be some form of popular election, an opportunity for reëlection was thought to be a desirable incentive to good behavior. Six or seven years was taken as an acceptable length for a single term and four years a convenient tenure if reëlection was permitted. It was upon these considerations that the term of four years was eventually agreed upon, with no restriction placed upon reëlection.

When it was believed that a satisfactory method of choosing the President had been discovered — and it is interesting to notice the members of the Convention later congratulated themselves that at least this feature of their government was above criticism — it was decided to give still further powers to the President, such as the making of treaties and the appointing of ambassadors and judges, although the advice and consent of the Senate was required, and in the case of treaties two-thirds of the members present must consent.

The presidency was frankly an experiment, the success of which would depend largely upon the first election; yet no one seems to have been anxious about the first choice of chief magistrate, and the reason is not far to seek. From the moment the members agreed that there should be a single executive they also agreed upon the man for the position. Just as Washington had been chosen unanimously to preside over the Convention, so it was generally accepted that he would be the first head of the new state. Such at least was the trend of conversation and even of debate on the floor of the Convention. It indicates something of the conception of the office prevailing at the time that Washington, when he became President, is said to have preferred the title, "His High Mightiness, the President of the United States and Protector of their Liberties."

The members of the Convention were plainly growing tired and there are evidences of haste in the work of the last few days. There was a tendency to ride rough-shod over those whose temperaments forced them to demand modifications in petty matters. This precipitancy gave rise to considerable dissatisfaction and led several delegates to declare that they would not sign the completed document. But on the whole the sentiment of the Convention was overwhelmingly favorable. Accordingly on Saturday, the 8th of September, a new committee was appointed, to consist of five members, whose duty it was "to revise the stile of and arrange the articles which had been agreed to by the House." The committee was chosen by ballot and was made up exclusively of friends of the new Constitution: Doctor Johnson of Connecticut, Alexander Hamilton, who had returned to Philadelphia to help in finishing the work, Gouverneur Morris, James Madison, and Rufus King. On Wednesday the twelfth, the Committee made its report, the greatest credit for which is probably to be given to Morris, whose powers of expression were so greatly admired. Another day was spent in waiting for the report to be printed. But on Thursday this was ready, and three days were devoted to going over carefully each article and section and giving the finishing touches. By Saturday the work of the Convention was brought to a close, and the Constitution was then ordered to be engrossed. On Monday, the 17th of September, the Convention met for the last time. A few of those present being unwilling to sign, Gouverneur Morris again cleverly devised a form which would make the action appear to be unanimous: "Done in Convention by the unanimous consent of the states present . . . in witness whereof we have hereunto subscribed our names." Thirty-nine delegates, representing twelve States, then signed the Constitution.

When Charles Biddle of Philadelphia, who was acquainted with most of the members of the Convention, wrote his *Autobiography*, which was published in 1802, he declared that for his part he considered the government established by the Constitution to be "the best in the world, and as perfect as any human form of government can be." But he prefaced that declaration with a statement that some of the best informed members of the Federal Convention had told him "they did not believe a single member was *perfectly* satisfied with the Constitution, but they believed it was the best they could ever agree upon, and that it was infinitely better to have such a one than break up without fixing on some form of government, which I believe at one time it was expected they would have done."

One of the outstanding characteristics of the members of the Federal Convention was their practical sagacity. They had a very definite object before them. No matter how much the members might talk about democracy in theory or about ancient confederacies, when it came to action they did not go outside of their own experience. The Constitution was devised to correct well-known defects and it contained few provisions which had not been tested by practical political experience. Before the Convention met, some of the leading men in the country had prepared lists of the defects which existed in the Articles of Confederation, and in the Constitution practically every one of these defects was corrected and by means which had already been tested in the States and under the Articles of Confederation.

CHAPTER VIII

THE UNION ESTABLISHED

THE course of English history shows that Anglo-Saxon tradition is strongly in favor of observing precedents and of trying to maintain at least the form of law, even in revolutions. When the English people found it impossible to bear with James II and made it so uncomfortable for him that he fled the country, they shifted the responsibility from their own shoulders by charging him with "breaking the original Contract between King and People." When the Thirteen Colonies had reached the point where they felt that they must separate from England, their spokesman, Thomas Jefferson, found the necessary justification in the fundamental compact of the first settlers "in the wilds of America" where "the emigrants thought proper to adopt that system of laws under which they had hitherto lived in the mother country"; and in the Declaration of Independence he charged the King of Great Britain with "repeated injuries and usurpations all having in direct object the establishment of an absolute Tyranny over these States."

And so it was with the change to the new form of government in the United States, which was accomplished only by disregarding the forms prescribed in the Articles of Confederation and has been called, therefore, "the Revolution of 1789." From the outset the new constitution was placed under the sanction of the old. The movement began with an attempt, outwardly at least, to revise the Articles of Confederation and in that form was authorized by Congress. The first breach with the past was made when the proposal in the Virginia Resolutions was accepted that amendments made by the Convention in the Articles of Confederation should be submitted to assemblies chosen by the people instead of to the legislatures of the separate States. This was the more readily accepted because it was believed that ratification by the legislatures would result in the formation of a treaty rather than in a working instrument of government. The next step was to prevent the work of the Convention from meeting the fate of all previous amendments to the Articles of Confederation, which had required the consent of every State in the Union. At the time the committee of detail made its report, the Convention was ready to agree that the consent of all the States was not necessary, and it eventually decided that, when ratified by the conventions of nine States, the Constitution should go into effect between the States so ratifying.

It was not within the province of the Convention to determine what the course of procedure should be in the individual States; so it simply transmitted the Constitution to Congress and in an accompanying document, which significantly omitted any request for the approval of Congress, strongly expressed the opinion that the Constitution should "be submitted to a convention of delegates chosen in each state by the people thereof." This was nothing less than indirect ratification by the people; and, since it was impossible to foretell in advance which of the States would or would not ratify, the original draft of "We, the People of the States of New Hampshire, Massachusetts, Rhode Island, . . ." was changed to the phrase "We, the People of the United States." No man of that day could imagine how significant this change would appear in the light of later history.

Congress did not receive the new Constitution enthusiastically, yet after a few days' discussion it unanimously voted, eleven States being present, that the recommendations of the Convention should be followed, and accordingly sent the document to the States, but without a word of approval or disapproval. On the whole the document was well received, especially as it was favored by the upper class, who had the ability and the opportunity for expression and were in a position to make themselves heard. For a time it looked as if the Constitution would be readily adopted.

The contest over the Constitution in the States is usually taken as marking the beginning of the two great national political parties in the United States. This was, indeed, in a way the first great national question that could cause such a division. There had been, to be sure, Whigs and Tories in America, reproducing British parties, but when the trouble with the mother country began, the successive congresses of delegates were recognized and attended only by the so-called American Whigs, and after the Declaration of Independence the name of Tory became a reproach, so that with the end of the war the Tory party disappeared. After the Revolution there were local parties in the various States, divided on one and another question, such as that of hard and soft money, and these issues had coincided in different States; but they were in no sense national parties with organizations, platforms, and leaders; they were purely local, and the followers of one or the other would have denied that they were anything else than Whigs. But a new issue was now raised. The Whig party split in two, new leaders appeared, and the elements gathered in two main divisions — the Federalists advocating, and the Anti-Federalists opposing, the adoption of the new Constitution.

There were differences of opinion over all the questions which had led to the calling of the Federal Convention and the framing of the Constitution and so there was inevitably a division upon the result of the Convention's work. There were those who wanted national authority for the suppression of disorder and of what threatened to be anarchy throughout the Union; and on the other hand there were those who opposed a strongly organized government through fear of its destroying liberty. Especially debtors and creditors took opposite sides, and most of the people in the United States could have been brought under one or the other category. The former favored a system of government and legislation which would tend to relieve or postpone the payment of debts; and, as that relief would come more readily from the State Governments, they were naturally the friends of State rights and State authority and were opposed to any enlargement of the powers of the Federal Government. On the other hand, were those who felt the necessity of preserving inviolate every private and public obligation and who saw that the separate power of the States could not accomplish what was necessary to sustain both public and private credit; they were disposed to use the resources of the Union and accordingly to favor the strengthening of the national government. In nearly every State there was a struggle between these classes.

In Philadelphia and the neighborhood there was great enthusiasm for the new Constitution. Almost simultaneously with the action by Congress, and before notification of it had been received, a motion was introduced in the Pennsylvania Assembly to call a ratifying convention. The Anti-Federalists were surprised by the suddenness of this proposal and to prevent action absented themselves from the session of the Assembly, leaving that body two short of the necessary quorum for the transaction of business. The excitement and indignation in the city were so great that early the next morning a crowd gathered, dragged two of the absentees from their lodgings to the State House, and held them firmly in their places until the roll was called and a quorum counted, when the House proceeded to order a State convention. As soon as the news of this vote got out, the city gave itself up to celebrating the event by the suspension of business, the ringing of church bells, and other demonstrations. The elections were hotly contested, but the Federalists were generally successful. The convention met towards the end of November and, after three weeks of futile discussion, mainly upon trivial matters and the meaning of words, ratified the Constitution on the 12th of December, by a vote of forty-six to twenty-three. Again the city of Philadelphia celebrated.

Pennsylvania was the first State to call a convention, but its final action was anticipated by Delaware, where the State convention met and ratified the Constitution by unanimous vote on the 7th of December. The New Jersey convention spent only a week in discussion and then voted, also unanimously, for ratification on the 18th of December. The next State to ratify was Georgia, where the Constitution was approved without a dissenting vote on January 2, 1788. Connecticut followed immediately and, after a session of only five days, declared itself in favor of the Constitution, on the 9th of January, by a vote of over three to one.

The results of the campaign for ratification thus far were most gratifying to the Federalists, but the issue was not decided. With the exception of Pennsylvania, the States which had acted were of lesser importance, and, until Massachusetts, New York, and Virginia should declare themselves, the outcome would be in doubt. The convention of Massachusetts met on the same day that the Connecticut convention adjourned. The sentiment of Boston, like that of Philadelphia, was strongly Federalist; but the outlying districts, and in particular the western part of the State, where Shays' Rebellion had broken out, were to be counted in the opposition. There were 355 delegates who took part in the Massachusetts convention, a larger number than was chosen in any of the other States, and the majority seemed to be opposed to ratification. The division was close, however, and it was believed that the attitude of two men would determine the result. One of these was Governor John Hancock, who was chosen chairman of the convention but who did not attend the sessions at the outset, as he was confined to his house by an attack of gout, which, it was maliciously said, would disappear as soon as it was known which way the majority of the convention would vote. The other was Samuel Adams, a genuine friend of liberty, who was opposed on principle to the general theory of the government set forth in the Constitution. "I stumble at the threshold," he wrote. "I meet with a national government, instead of a federal union of sovereign states." But, being a shrewd politician, Adams did not commit himself openly and, when the tradesmen of Boston declared themselves in favor of ratification, he was ready to yield his personal opinion.

There were many delegates in the Massachusetts convention who felt that it was better to amend the document before them than to try another Federal Convention, when as good an instrument might not be devised. If this group were added to those who were ready to accept the Constitution as it stood, they would make a majority in favor of the new government. But the delay involved in amending was regarded as dangerous, and it was argued that, as the Constitution made ample provision for changes, it would be safer and wiser to rely upon that method. The question was one, therefore, of immediate or future amendment. Pressure was accordingly brought to bear upon Governor Hancock and intimations were made to him of future political preferment, until he was persuaded to propose immediate ratification of the Constitution, with an urgent recommendation of such amendments as would remove the objections of the Massachusetts people. When this proposal was approved by Adams, its success was assured, and a few days later, on the 6th of February, the convention voted 187 to 168 in favor of ratification. Nine amendments, largely in the nature of a bill of rights, were then demanded, and the Massachusetts representatives in Congress were enjoined "at all times, . . . to exert all their influence, and use all reasonable and legal methods, To obtain a ratification of the said alterations and provisions." On the very day this action was taken, Jefferson wrote from Paris to Madison: "I wish with all my soul that the nine first conventions may accept the new Constitution, to secure to us the good it contains; but I equally wish that the four latest, whichever they may be, may refuse to accede to it till a declaration of rights be annexed."

Boston proceeded to celebrate as Philadelphia, and Benjamin Lincoln wrote to Washington, on the 9th of February, enclosing an extract from the local paper describing the event:

> By the paper your Excellency will observe some account of the parade of the Eighth the printer had by no means time enō to do justice to the subject. To give you some idea how far he has been deficient I will mention an observation I heard made by a Lady the last evening who saw the whole that the description in the paper would no more compare with the original than the light of the faintest star would with that of the Sun fortunately for us the whole ended without the least disorder and the town during the whole evening was, so far as I could observe perfectly quiet.[1]

He added another paragraph which he later struck out as being of little importance; but it throws an interesting sidelight upon the customs of the time.

> The Gentlemen provided at Faneul Hall some biscuit & cheese four q^r Casks of wine three barrels & two hog^s of punch the moment they found that the people had drank sufficiently means were taken to overset the two hog^s punch this being done the company dispersed and the day ended most agreeably.[2]

Maryland came next. When the Federal Convention was breaking up, Luther Martin was speaking of the new system of government to his colleague, Daniel of St. Thomas Jenifer, and exclaimed: "I'll be hanged if ever the people of Maryland agree to it!" To which his colleague retorted: "I advise you to stay in Philadelphia, lest you should be hanged." And Jenifer proved to be right, for in Maryland the Federalists obtained control of the convention and, by a vote of 63 to 11, ratified the Constitution on the 26th of April.

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[1] *Documentary History*, vol. iv, pp. 488–490.

[2] *Ibid.*

In South Carolina, which was the Southern State next in importance to Virginia, the compromise on the slave trade proved to be one of the deciding factors in determining public opinion. When the elections were held, they resulted in an overwhelming majority for the Federalists, so that after a session of less than two weeks the convention ratified the Constitution, on the 28th of May, by a vote of over two to one.

The only apparent setback which the adoption of the Constitution had thus far received was in New Hampshire, where the convention met early in February and then adjourned until June to see what the other States might do. But this delay proved to be of no consequence for, when the time came for the second meeting of the New Hampshire delegates, eight States had already acted favorably and adoption was regarded as a certainty. This was sufficient to put a stop to any further waiting, and New Hampshire added its name to the list on the 21st of June; but the division of opinion was fairly well represented by the smallness of the majority, the vote standing 57 to 46.

Nine States had now ratified the Constitution and it was to go into effect among them. But the support of Virginia and New York was of so much importance that their decisions were awaited with uneasiness. In Virginia, in spite of the support of such men as Washington and Madison, the sentiment for and against the Constitution was fairly evenly divided, and the opposition numbered in its ranks other names of almost equal influence, such as Patrick Henry and George Mason. Feeling ran high; the contest was a bitter one and, even after the elections had been held and the convention had opened, early in June, the decision was in doubt and remained in doubt until the very end. The situation was, in one respect at least, similar to that which had existed in Massachusetts, in that it was possible to get a substantial majority in favor of the Constitution provided certain amendments were made. The same arguments were used, strengthened on the one side by what other States had done, and on the other side by the plea that now was the time to hold out for amendments. The example of Massachusetts, however, seems to have been decisive, and on the 25th of June, four days later than

New Hampshire, the Virginia convention voted to ratify, "under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein, than to bring the Union into danger by delay, with a hope of obtaining amendments previous to the ratification."

When the New York convention began its sessions on the 17th of June, it is said that more than two-thirds of the delegates were Anti-Federalist in sentiment. How a majority in favor of the Constitution was obtained has never been adequately explained, but it is certain that the main credit for the achievement belongs to Alexander Hamilton. He had early realized how greatly it would help the prospects of the Constitution if thinking people could be brought to an appreciation of the importance and value of the new form of government. In order to reach the intelligent public everywhere, but particularly in New York, he projected a series of essays which should be published in the newspapers, setting forth the aims and purposes of the Constitution. He secured the assistance of Madison and Jay, and before the end of October, 1787, published the first essay in *The Independent Gazetteer.* From that time on these papers continued to be printed over the signature of "Publius," sometimes as many as three or four in a week. There were eighty-five numbers altogether, which have ever since been known as *The Federalist.* Of these approximately fifty were the work of Hamilton, Madison wrote about thirty and Jay five. Although the essays were widely copied in other journals, and form for us the most important commentary on the Constitution, making what is regarded as one of America's greatest books, it is doubtful how much immediate influence they had. Certainly in the New York convention itself Hamilton's personal influence was a stronger force. His arguments were both eloquent and cogent, and met every objection; and his efforts to win over the opposition were unremitting. The news which came by express riders from New Hampshire and then from Virginia were also deciding factors, for New York could not afford to remain out of the new Union if it was to embrace States on either side. And yet the debate continued, as the opposition was putting forth every effort to make ratification conditional upon certain amendments being adopted. But Hamilton resolutely refused to make any concessions and at length was successful in persuading the New York convention, by a vote of 30 against

27, on the 26th of July, to follow the example of Massachusetts and Virginia and to ratify the Constitution with merely a recommendation of future amendments.

The satisfaction of the country at the outcome of the long and momentous struggle over the adoption of the new government was unmistakable. Even before the action of New York had been taken, the Fourth of July was made the occasion for a great celebration throughout the United States, both as the anniversary of independence and as the consummation of the Union by the adoption of the Constitution.

The general rejoicing was somewhat tempered, however, by the reluctance of North Carolina and Rhode Island to come under "the new roof." Had the convention which met on the 21st of July in North Carolina reached a vote, it would probably have defeated the Constitution, but it was doubtless restrained by the action of New York and adjourned without coming to a decision. A second convention was called in September, 1789, and in the meantime the new government had come into operation and was bringing pressure to bear upon the recalcitrant States which refused to abandon the old union for the new. One of the earliest acts passed by Congress was a revenue act, levying duties upon foreign goods imported, which were made specifically to apply to imports from Rhode Island and North Carolina. This was sufficient for North Carolina, and on November 21, 1789, the convention ratified the Constitution. But Rhode Island still held out. A convention of that State was finally called to meet in March, 1790, but accomplished nothing and avoided a decision by adjourning until May. The Federal Government then proceeded to threaten drastic measures by taking up a bill which authorized the President to suspend all commercial intercourse with Rhode Island and to demand of that State the payment of its share of the Federal debt. The bill passed the Senate but stopped there, for the State gave in and ratified the Constitution on the 29th of May. Two weeks later Ellsworth, who was now United States Senator from Connecticut, wrote that Rhode Island had been "brought into the Union, and by a pretty cold measure in Congress, which would have exposed me to some censure, had it not produced the effect which I expected it would and which in fact it has done. But 'all is well that ends well.' The Constitution is now adopted by all the States and I have much satisfaction, and perhaps some vanity, in seeing, at length, a great work finished, for which I have long labored incessantly."[1]

Perhaps the most striking feature of these conventions is the trivial character of the objections that were raised. Some of the arguments, it is true, went to the very heart of the matter and considered the fundamental principles of government. It is possible to tolerate and even to sympathize with a man who declared:

> Among other deformities the Constitution has an awful squinting. It squints toward monarchy; . . . your president may easily become a king. . . . If your American chief be a man of ambition and ability how easy it is for him to render himself absolute. We shall have a king. The army will salute him monarch.[1]

But it is hard to take seriously a delegate who asked permission "to make a short apostrophe to liberty," and then delivered himself of this bathos:

> O liberty! — thou greatest good — thou fairest property — with thee I wish to live — with thee I wish to die! — Pardon me if I drop a tear on the peril to which she is exposed; I cannot, sir, see this brightest of jewels tarnished! a jewel worth ten thousand worlds! and shall we part with it so soon? O no![2]

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[1] "Connecticut's Ratification of the Federal Constitution," by B. C. Steiner, in *Proceedings of the American Antiquarian Society*, April, 1915, pp. 88–89.

[2] Elliot's *Debates on the Federal Constitution*, vol. iii, p. 144.

There might be some reason in objecting to the excessive power vested in Congress; but what is one to think of the fear that imagined the greatest point of danger to lie in the ten miles square which later became the District of Columbia, because the Government might erect a fortified stronghold which would be invincible? Again, in the light of subsequent events it is laughable to find many protesting that, although each house was required to keep a journal of proceedings, it was only required "*from time to time* to publish the same, excepting such parts as may in their judgment require secrecy." All sorts of personal charges were made against those who were responsible for the framing of the Constitution. Hopkinson wrote to Jefferson in April, 1788:

> You will be surprised when I tell you that our public News Papers have anounced General Washington to be a Fool influenced & lead by that Knave Dr. Franklin, who is a public Defaulter for Millions of Dollars, that Mr. Morris has defrauded the Public out of as many Millions as you please & that they are to cover their frauds by this new Government.[1]

All things considered, it is difficult to avoid the conclusion that such critics and detractors were trying to find excuses for their opposition.

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[1] *Documentary History of the Constitution*, vol. iv, p. 563.

The majorities in the various conventions can hardly be said really to represent the people of their States, for only a small percentage of the people had voted in electing them; they were representative rather of the propertied upper class. This circumstance has given rise to the charge that the Constitution was framed and adopted by men who were interested in the protection of property, in the maintenance of the value of government securities, and in the payment of debts which had been incurred by the individual States in the course of the Revolution. Property-holders were unquestionably assisted by the mere establishment of a strong government. The creditor class seemed to require some special provision and, when the powers of Congress were under consideration in the Federal Convention, several of the members argued strongly for a positive injunction on Congress to assume obligations of the States. The chief objection to this procedure seemed to be based upon the fear of benefiting speculators rather than the legitimate creditors, and the matter was finally compromised by providing that all debts should be "as valid against the United States under this Constitution as under the Confederation." The charge that the Constitution was framed and its adoption obtained by men of property and wealth is undoubtedly true, but it is a mistake to attribute unworthy motives to them. The upper classes in the United States were generally people of wealth and so would be the natural holders of government securities. They were undoubtedly acting in self-protection, but the responsibility rested upon them to take the lead. They were acting indeed for the public interest in the largest sense, for conditions in the United States were such that every man might become a landowner and the people in general therefore wished to have property rights protected.

In the autumn of 1788 the Congress of the old Confederation made testamentary provision for its heir by voting that presidential electors should be chosen on the first Wednesday in January, 1789; that these electors should meet and cast their votes for President on the first Wednesday in February; and that the Senate and House of Representatives should assemble on the first Wednesday in March. It was also decided that the seat of government should be in the City of New York until otherwise ordered by Congress. In accordance with this procedure, the requisite elections were held, and the new government was duly installed. It happened in 1789 that the first Wednesday in March was the fourth day of that month, which thereby became the date for the beginning of each subsequent administration.

The acid test of efficiency was still to be applied to the new machinery of government. But Americans then, as now, were an adaptable people, with political genius, and they would have been able to make almost any form of government succeed. If the Federal Convention had never met, there is good reason for believing that the Articles of Confederation, with some amendments, would have been made to work. The success of the new government was therefore in a large measure dependent upon the favor of the people. If they wished to do so, they could make it win out in spite of obstacles. In other words, the new government would succeed exactly to the extent to which the people stood back of it. This was the critical moment when the slowly growing prosperity, described at length and emphasized in the previous chapters, produced one of its most important effects. In June, 1788, Washington wrote to Lafayette:

> I expect, that many blessings will be attributed to our new government, which are now taking their rise from that industry and frugality into the practice of

> which the people have been forced from necessity. I really believe that there never was so much labour and economy to be found before in the country as at the present moment. If they persist in the habits they are acquiring, the good effects will soon be distinguishable. When the people shall find themselves secure under an energetic government, when foreign Nations shall be disposed to give us equal advantages in commerce from dread of retaliation, when the burdens of the war shall be in a manner done away by the sale of western lands, when the seeds of happiness which are sown here shall begin to expand themselves, and when every one (under his own vine and fig-tree) shall begin to taste the fruits of freedom — then all these blessings (for all these blessings will come) will be referred to the fostering influence of the new government. Whereas many causes will have conspired to produce them.

A few months later a similar opinion was expressed by Crèvecœur in writing to Jefferson:

> Never was so great a change in the opinion of the best people as has happened these five years; almost everybody feels the necessity of coercive laws, government, union, industry, and labor. . . . The exports of this country have singularly increased within these two years, and the imports have decreased in proportion.

The new Federal Government was fortunate in beginning its career at the moment when returning prosperity was predisposing the people to think well of it. The inauguration of Washington marked the opening of a new era for the people of the United States of America.

APPENDIX[1]

THE DECLARATION OF INDEPENDENCE — 1776

IN CONGRESS, JULY 4, 1776

The unanimous Declaration of the thirteen united States of America

WHEN in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the

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[1] The documents in this Appendix follow the text of the *Revised Statutes of the United States*, Second Edition, 1878.

Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the

Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence[.] They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representative of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

New Hampshire.

JOSIAH BARTLETT,
WM. WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay.

SAML. ADAMS,
JOHN ADAMS,
ROBT. TREAT PAINE,
ELBRIDGE GERRY.

Rhode Island.

STEP. HOPKINS,
WILLIAM ELLERY.

Connecticut.

ROGER SHERMAN,
SAM'EL HUNTINGTON,
WM. WILLIAMS,
OLIVER WOLCOTT.

New York.

Wm. Floyd,
Phil. Livingston,
Frans. Lewis,
Lewis Morris.

New Jersey.

Richd. Stockton,
Jno. Witherspoon,
Fras. Hopkinson,
John Hart,
Abra. Clark.

Pennsylvania.

Robt. Morris,
Benjamin Rush,
Benja. Franklin,
John Morton,
Geo. Clymer,
Jas. Smith,
Geo. Taylor,
James Wilson,
Geo. Ross.

Delaware.

Cæsar Rodney,
Geo. Read,
Tho. M'Kean.

Maryland.

Samuel Chase,
Wm. Paca,
Thos. Stone,
Charles Carroll of Carrollton.

Virginia.

George Wythe,
Richard Henry Lee,
Th. Jefferson,
Benja. Harrison,
Thos. Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

North Carolina.

WM. HOOPER,	JOHN PENN.
JOSEPH HEWES,	

South Carolina.

EDWARD RUTLEDGE,	THOMAS LYNCH, JUNR.,
THOS. HEYWARD, JUNR.,	ARTHUR MIDDLETON.

Georgia.

BUTTON GWINNETT,	GEO. WALTON.
LYMAN HALL,	

NOTE.—Mr. Ferdinand Jefferson, Keeper of the Rolls in the Department of State, at Washington, says: "The names of the signers are spelt above as in the fac-simile of the original, but the punctuation of them is not always the same; neither do the names of the States appear in the fac-simile of the original. The names of the signers of each State are grouped together in the fac-simile of the original, except the name of Matthew Thornton, which follows that of Oliver Wolcott."

ARTICLES OF CONFEDERATION — 1777.

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventyseven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

"*Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.*

Article I. The stile of this confederacy shall be "The United States of America."

Article II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

ARTICLE IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States. — fixing the standard of weights and measures throughout the United States. — regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated — establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office — appointing all officers of the land forces, in the service of the United States, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States — making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted, — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we re[s]pectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.[1]

On the part & behalf of the State of New Hampshire.

JOSIAH BARTLETT,
JOHN WENTWORTH, JUNR.,
August 8th, 1778.

On the part and behalf of the State of Massachusetts Bay.

JOHN HANCOCK,
SAMUEL ADAMS,
ELDBRIDGE GERRY,
FRANCIS DANA,
JAMES LOVELL,
SAMUEL HOLTEN.

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[1] From the circumstances of delegates from the same State having signed the Articles of Confederation at different times, as appears by the dates, it is probable they affixed their names as they happened to be present in Congress, after they had been authorized by their constituents.

On the part and behalf of the State of Rhode Island and Providence Plantations.

William Ellery,
Henry Marchant,
John Collins.

On the part and behalf of the State of Connecticut.

Roger Sherman,
Samuel Huntington,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams.

On the part and behalf of the State of New York.

Jas. Duane,
Fra. Lewis,
Wm. Duer,
Gouv. Morris.

On the part and in behalf of the State of New Jersey, Novr. 26, 1778.

Jno. Witherspoon,
Nathl. Scudder.

On the part and behalf of the State of Pennsylvania.

Robt. Morris,
Daniel Roberdeau,
Jona. Bayard Smith,
William Clingan,
Joseph Reed, 22d July, 1778.

On the part & behalf of the State of Delaware.

Tho. M'Kean, Feby. 12, 1779.
John Dickinson, May 5, 1779.
Nicholas Van Dyke.

On the part and behalf of the State of Maryland.

John Hanson, March 1, 1781.
Daniel Carroll, Mar. 1, 1781.

On the part and behalf of the State of Virginia.

Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee.

On the part and behalf of the State of No. Carolina.

John Penn, July 21st, 1778.
Corns. Harnett,
Jno. Williams.

On the part & behalf of the State of South Carolina

Henry Laurens,
William Henry Drayton,
Jno. Mathews,
Richd. Hutson,
Thos. Heyward, Junr.

On the part & behalf of the State of Georgia.

Jno. Walton, 24th July, 1778.
Edwd. Telfair,
Edwd. Langworthy.

THE NORTHWEST TERRITORIAL GOVERNMENT — 1787.

THE CONFEDERATE CONGRESS, JULY 13, 1787.

An Ordinance for the government of the territory of the United States northwest of the river Ohio.

SECTION 1. *Be it ordained by the United States in Congress assembled*, That the said territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

SEC. 2. *Be it ordained by the authority aforesaid*, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now being in force among them, relative to the descent and conveyance of property.

Sec. 3. *Be it ordained by the authority aforesaid,* That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Sec. 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

SEC. 5. The governor and judges, or a majority of them, shall adopt and publish in the distric[t] such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

SEC. 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

SEC. 7. Previous to the organization of the general assembly the governor shall appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

SEC. 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

SEC. 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: *Provided*, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: *Provided also,* That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

Sec. 10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

Sec. 11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

SEC. 12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

SEC. 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

SEC. 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territories.

ARTICLE II.

The inhabitants of the said territory shall always be entitled to the benefits of the writs of *habeas corpus*, and of the trial by jury; of a propo[r]tionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, *bona fide*, and without fraud previously formed.

ARTICLE III.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted, or to be contracted, and a proportional part of the expenses of government to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona-fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V.

There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however*, And it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: *Provided*, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ARTICLE VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

CONSTITUTION OF THE UNITED STATES—1787.

We THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE. I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]**

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and [if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.] *

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*Modified by Fourteenth Amendment.

**Superseded by Seventeenth Amendment.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and dis-

* Superseded by Seventeenth Amendment.

qualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; —And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof.

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or expost facto Law shall be passed.

No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.*

*Modified by Sixteenth Amendment.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

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*Superseded by Twelfth Amendment.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects;*

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State,

*Modified by Eleventh Amendment.

the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by

Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this

Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independance of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

G^{o}: Washington—
Presidt. and Deputy from Virginia.

New Hampshire.

John Langdon
Nicholas Gilman

Massachusetts.

Nathaniel Gorham
Rufus King

Connecticut.

Wm. Saml. Johnson
Roger Sherman

New York.

Alexander Hamilton

New Jersey.

Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

Pensylvania.

B. Franklin
Thomas Mifflin
Robt. Morris
Geo. Clymer
Thos. Fitzsimons
Jared Ingersoll
James Wilson
Gouv Morris

Delaware.

Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco: Broom

Maryland.

James McHenry
Dan of St Thos Jenifer
Danl. Carroll

Virginia.

John Blair—
James Madison Jr.

North Carolina.

Wm. Blount
Richd. Dobbs Spaight
Hu Williamson

South Carolina.

J. Rutledge,
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia.

William Few
Abr Baldwin

Attest William Jackson *Secretary*

AMENDMENTS

ARTICLE I.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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*In the original manuscripts the first twelve amendments have no numbers. The first ten amendments appear to have been in force from November 3, 1791.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.*

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

*Proclaimed to be in force: January 8, 1798.

ARTICLE XII.*

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; —The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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*Proclaimed to be in force: September 25, 1804.

ARTICLE XIII.*

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.**

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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*Proclaimed to be in force: December 18, 1865.

**Proclaimed to be in force: July 28, 1868.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.*

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI.**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment, among the several States, and without regard to any census or enumeration.

*Proclaimed to be in force: March 30, 1870.

**Proclaimed to be in force: February 25, 1913.

ARTICLE XVII.*

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to effect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII.**

SECTION 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

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*Proclaimed to be in force: May 31, 1913.

**Proclaimed to be in force: January 29, 1919.

ARTICLE XIX.*

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

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*Proclaimed to be in force: August 26, 1920.

BIBLIOGRAPHICAL NOTE

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INDEX

A

Adams, John, on American Peace Commission, 9 *et seq.*; personal characteristics, 10; negotiates commercial treaty with the Netherlands, 11; on fisheries question, 13–14; on settlement of commercial indebtedness, 14–15; on granting compensation to Loyalists, 20; complains of trade restrictions for New England, 26
Adams, Samuel, and the Constitution, 151, 152
Albany Congress (1754), 49, 50
Annapolis Trade Convention (1786), 100–06
Anti-Federalist party, 147
Articles of Confederation, adoption (1777), 49–50; ratification (1781), 50, 57–59; based on Franklin's plan of union, 51–52; provisions, 52–54, 67–68, 86, 100; questions of land ownership delay ratification, 56–57, 58; financial power of Congress under, 86; failure of Commercial amendment of 1784, 99; relation to Constitution, 125, 131, 144; defects corrected in Constitution, 142; attempt at revision, 144–45; text, 175–189
Assenisipia, 69

B

Bancroft, George, *History of the Formation of the Consitution*, cited, 103 (note)
Biddle, Charles, *Autobiography*, on the Constitution, 141
Bowdoin, James, Governor of Massachusetts, and Shays' Rebellion, 94, 95
Bryce, Lord, cited, 13 (note)

C

Cambridge (Mass.), Shays' Rebellion at, 94
Canada, Loyalists go to, 19; Articles of Confederation on admitting, 67
Channing, Edward, *History of the United States*, cited, 21 (note), 61 (note)
Cherronesus, 69
China, trade with, 28
Combe, George, *Tour of the United States*, quoted, 45
Commerce, before Revolution, 24; conditions after Revolution, 24–27; commercial treaties, 26; development of trade with Far East, 28; phases of United States foreign trade, 28–29; domestic trade, 29–30; policy of reprisal, 97–99
Committees of Correspondence, 49

Confederation, the, 35 *et seq.*, 108; *see also* Articles of Confederation

Congress, Continental, advises States to adopt governments, 38; prints constitutions, 41; Declaration of Independence, 49, 63, 143–44, 167–74; Articles of Confederation, 49–50, 51; *see also* Articles of Confederation; Franklin's plan of union, 50–51; composition, 85; financial problem, 85–86

Congress, Federal, 52–53; powers and duties, 53–54; and Northwest Territory, 62; national system of coinage, 63–64; Land Ordinance (1785), 64–66, 71; Jefferson's Ordinance of 1784, 69–71, 75; Ordinance of 1787, 72–80, 190–200; inefficiency, 81–84, 127; Revenue Amendment, 87; financial crisis, 87–88; commercial amendment of 1784, 98–99; calls Federal Convention, 106; reception of Constitution, 145–46; votes that presidential electors be chosen (1788), 163

Congress, United States, Constitutional powers and limitations, 127–29, 130, 131, 136; objection to excessive power of, 161; revenue act (1789), 159

Connecticut, State government, 44; ratification of Constitution, 149–50

Constitution, development of, 108 *et seq.*, 125 *et seq.*; great compromise of, 121–23, 127; transmitted to Congress, 145–46; contest over ratification, 146 *ct seq.*; framed by propertied interests, 162–163; text, 201–28; bibliography, 231–32

Cook, Captain James, 28

Cornwallis, General Edward, surrender at Yorktown (1781), 5

Crèvecœur, letter to Jefferson, 165

Cutler, Manasseh, 73–74

D

Day, Clive, *Encyclopedia of American Government*, cited, 26 (note)

Declaration of Independence, adopted, 49; Jefferson drafts, 63; charges against the King, 143–44; text, 167–74

Delaware, and western land policy, 57; Annapolis Trade Convention, 100; ratification of Constitution, 149

Dickerson, Senator, of New Jersey, quoted, 78

Dickinson, John, chairman of committee to prepare Articles of Confederation, 49, 51, 114; against centralized government, 114

District of Columbia, fear of a fortified stronghold, 161

Duer, Colonel William, 74

Dunn, J. P., Jr., *Indiana: A Redemption from Slavery*, quoted, 71

Dunning, W. A., *The British Empire and the United States*, cited, 13 (note)

E

Elliot's *Debates on the Federal Constitution*, cited 160 (note)

Ellsworth, Oliver, delegate to Federal Convention, 115, 124; on slavery, 130; report on Rhode Island's ratification of Constitution, 159

England, *see* Great Britain

Executive, *see* President

F

Federal Convention, 106–07, 108 *et seq.*; *Records,* cited, 30 (note)
Federalist, The, 157
Federalist party, 147
Finance, questions of settlement of debts, 14–15, 147–148; condition of currency, 31–32; national system of coinage, 63–64; Revenue Amendment, 87; financial crisis, 87–88; revenue act (1789), 159
Fish, C. R., *American Diplomacy,* quoted, 27
Fisheries, 13–14, 25
Fiske, John, *The Critical Period of American History,* quoted, 81
France, attitude toward United States, 4–5; relationship of United States with, 6–8; treaty with United States (1778), 7; excludes United States shipping, 26–27
Franklin, Benjamin, authorized to negotiate consular convention with France, 5; on Peace Commission, 8–9, 11–12, 21; personal characteristics, 9; on settlement of debts, 14; Albany plan, 50; presents plan of union to Continental Congress (1775), 50–52; in Federal Convention, 113, 120; on the new republic, 134–35; personal charge against, 161; bibliography, 232
French and Indian War, effect on settlement, 56

G

Georgia, ratification of Constitution, 149
Germany, American missionary societies, 3

Gerry, Elbridge, 115, 132, 135
Gorham, Nathaniel, 113–14, 124
Grayson, William, of Virginia, 64; quoted, 76–77
Great Britain, attitude toward former colonies, 3; American missionary societies, 3; admits independence of colonies, 6; France and, 7; Spain and, 7; and United States boundary lines, 12–13; and fisheries, 13–14; relation to American trade, 24–28, 97–98; compact theory of government in, 39; military posts retained by, 84–85
Grigsby, H. B., quoted, 15–16

H

Hamilton, Alexander, at Annapolis Trade Convention, 104, 105; personal characteristics, 104–05; at Federal Convention, 115–16, 120; on committee to revise Constitution, 140; and *The Federalist,* 156–57; influence in New York convention, 157; bibliography, 232
Hancock, John, 150, 151–52
Henry, Prince, of Prussia, approached on subject of becoming king of United States, 134
Henry, Patrick, 61, 63, 155
Hopkinson, letter to Jefferson, 161
Hutchins, Thomas, Geographer of the United States, 64

I

Illinoia, 69
Illinois admitted as State (1818), 79
Independent Gazetteer, The, 156
Indian Queen Tavern, delegates to Federal Convention at, 109

Indiana admitted as State (1816), 79

J

Jameson, J. F., quoted, 59–60
Jay, John, on reciprocity of consular convention with France, 5; Peace Commissioner, 10, 11; personal characteristics, 10–11; sent to Spain, 11; on settlement of debts, 15; on compensation to Loyalists, 20; and *The Federalist*, 156–57
Jefferson, Ferdinand, quoted, 174 (note)
Jefferson, Thomas, on Peace Commission, 10; and land policy, 62–64; life and characteristics, 62–63; Ordinance of 1784, 67, 69–71, 75; on value of Continental scrip, 88–89; opinion of Federal Convention, 109, 116; spokesman for colonies, 143; on ratification of Constitution, 152; Hopkinson's letter to, 161; Crèvecœur's letter to, 165; bibliography, 232
Jefferson's Ordinance of 1784, *see* Ordinance of 1784
Jenifer, Daniel of St. Thomas, 153–54
Johnson, Dr. W. S., 115, 140
Judiciary, 131–33

K

Kent, Chancellor, 61
Kercheval, Samuel, *History of the Valley of Virginia*, quoted, 33–34
King, Rufus, in Federal Convention, 113, 132, 140; on three-fifths rule, 122; on form of executive, 134
Knox, Henry, 61

L

Lafayette, Marquis de, Washington's letter to, 164–65
La Luzerne, Chevalier de, French Minister in Philadelphia, 7
Land, question of ownership of western, 56–57; cession to United States by States, 58–59; American interest in, 59–62; Jefferson and land policy, 62–64; plan for sale under Ordinance of 1785, 65–66
Land Ordinance of 1785, 64–66, 71
Lansing, John, 116
Laurens, Henry, 10
Lecky, W. E. H., *The American Revolution*, cited, 32 (note)
Lincoln, General Benjamin, and Shays' Rebellion, 94; letter to Washington, 152–153
Lingelbach, W. E., cited, 3 (note)
Loyalists, question of compensation of, 16–17, 19–20; groups comprising, 17; treatment of, 18–19; Commissioners agree to restitution, 20

M

McMaster, J. B., *History of the People of the United States*, quoted, 31; *Acquisition of Industrial, Popular, and Political Rights of Man in America*, quoted, 45
Madison, James, describes trade situation, 30; on violation of federal authority by Virginia, 100–01; personal characteristics, 103–04; and Annapolis Trade Convention, 104; quoted, 108; Washington and, 111; for strong

Madison, James—*Continued*
central government, 115; in Federal Convention, 111, 132, 140; supports Constitution, 155; and *The Federalist*, 156–57
Martin, Luther, 116, 132, 153
Maryland, and land claims, 57, 58; suggestion as to power of Congress over western land, 68; agreement with Virginia, 100, 104; ratification of Constitution, 153–54
Mason, George, 112, 132, 155
Massachusetts, State Constitution submitted to people for approval, 46; Shays' Rebellion (1786), 91–96; ratification of Constitution, 150–53
Mayflower Compact, 40
Metropotamia, 69
Michigania, 69
Mississippi River, right of navigation declared, 14
Monroe, James, invests in western land, 61; Grayson writes to, 76
Morris, Gouverneur, invests in western land, 61; quoted, 108, 140; in Federal Convention, 112–13, 132, 140; and Washington, 113 (note)
Morris, Robert, invests in western land, 61

N

Navigation Acts, 24, 27
Netherlands, the, commercial treaty with, 11
New England, prosperity due to commerce, 24; effect of trade restrictions on, 26; "plantation covenants" 40; system of land grant, 65; interest in trade, 97; favors navigation acts, 129
New England Confederation (1643), 48
New Hampshire, Vermont withdraws from New York and, 68; and Federal Convention, 106–07; ratification of Constitution, 154–55, 157
New Jersey, ratification of Constitution, 149
New Jersey Plan, 118, 119, 121, 125–26
New York cession of western land claims to United States, 58, 59; Vermont withdraws from New Hampshire and, 68; refuses to accede to Revenue Amendment, 88; ratification of Constitution, 150, 156–58
New York City chosen as seat of government, 163
Newburg on the Hudson, mutinous Revolutionary soldiers at, 81–82
Newfoundland, fisheries, 13
North Carolina, ratification of Constitution, 158
Northwest Ordinance, 55 *et seq.*; *see also* Land Ordinance of 1785, Ordinance of 1784, Ordinance of 1787
Northwest Territory, settlement, 55–56; States relinquish claims, 57–59; questions of land sale and government, 62 *et seq.*

O

Ohio admitted as State (1802), 78
Ohio Company of Associates, 72
Ordinance of 1784, 67, 69–71, 75
Ordinance of 1785, *see* Land Ordinance of 1785
Ordinance of 1787, Congress adopts, 72; stimulus from Ohio Company, 72–74; authorship, 75; provisions, 75–77; successful operation, 77–80; text, 190–200

Oregon, question of military occupation (1825), 77–78
Otto, Louis, French Chargé d'Affaires, letter to Vergennes, 101–03

P

Panic of 1785, 30–31
Paterson, William, against plan of centralized government, 114
Pelisipia, 69
Pennsylvania, invited to form commercial policy with other States, 100; ratification of Constitution, 148–49
Philadelphia, enthusiasm for Constitution in, 148, 149
Philadelphia Convention, *see* Federal Convention
Pilgrim Fathers, *Mayflower* Compact, 40
Pinckney, Charles, 114, 126
Pinckney, General C. C., 114
Political parties, 146–47; *see also* names of parties
Polypotamia, 69
Pontiac's Conspiracy, effect on settlement, 56
Potomac River, agreement between Virginia and Maryland regarding, 100
President, creation of office, 133–34; presidency modeled after State governorships, 134; election of, 136–37; third term, 137–38; powers, 138; Washington chosen as first, 138–39
Princeton, Congress flees to, 84
Proclamation of 1763, 56, 57

R

Randolph, Edmund, 112, 124; quoted, 134
Read, W. T., *Life and Correspondence of George Read*, quoted, 113 (note)
"Revolution of 1789," 144
Revolutionary War, effect on American people, 22; economic conditions after, 23 *et seq.*
Rhode Island, State government, 44; and question of western land ownership, 57; rejects tariff provision (1782), 86; currency trouble (1786), 89–90; attitude toward Shays' Rebellion, 95; recognition of bad trade conditions, 96; and Federal Convention, 106; ratification of Constitution, 158, 159
Roads, *see* Transportation
Rousseau, J. J., *Contrat Social*, 39–40
Russia, trade with, 28
Rutledge, John, 114, 124, 125

S

St. Clair, General Arthur, Cutler endorses for governorship of New York, 74
Saratoga, 69
Scioto Associates, 74
Shays, Daniel, 94
Shays' Rebellion (1786), 91–96
Sherman, Roger, 115
Slavery, Ordinance of 1784 on, 70; Ordinance of 1787 on, 76–77; counting of slaves in enumerating population, 121–22; attitude of Federal Convention delegates toward, 130
Slave trade, compromise concerning, 129–30
South, system of land grant, 65; need for slaves, 129
South Carolina, class control in, 45; ratification of Constitution, 154

Spain, France and, 7–8; and United States, 8; possessions in America, 8; Jay sent to, 11; excludes United States shipping, 26
Stamp Act Congress (1765), 49
Stark, J. H., quoted, 18–19
State governments, establishment of, 38; constitutions, 41–43; identical with colonial, 44; aristocratic tendencies, 44–45, 47–48; democratic tendencies, 46–47, 48
Steiner, B. C., *Connecticut's Ratification of the Federal Constitution*, quoted, 159–160
Suffrage, 36–37, 45
Supreme Court established, 131; *see also* Judiciary
Sylvania, 69

T

Thieriot, Saxon Commissioner of Commerce to America, quoted, 3, 4–5
Tory party, 146
Transportation, 29–30; *see also* Commerce
Treaty of Peace (1783), 1 *et seq.*; ratified, 21; determines boundaries, 12–13, 56; bibliography of diplomatic history connected with, 230
Trevett *vs.* Weeden (1786), 90–91
Tuckerman, Henry, *America and her Commentators*, cited, 33 (note)

U

United Empire Loyalists, 19
United States, named, 1; status as new republic, 1–5; population, 2–3, 35, 55–56; boundaries, 12–13, 56; economic condition after Revolution, 23 *et seq.*; commercial treaties, 26; aristocratic control in, 36, 44–45; suffrage after the Revolution, 36–37; political genius in, 37–38; *see also* names of States, State governments

V

Vergennes, Comte de, French Minister, Franklin and, 21; Otto's letter to, 101–03
Vermont, withdraws from New York and New Hampshire, 68; attitude in Shays' Rebellion, 95
Vincennes, effect of Ordinance of 1784 on, 71
Virginia, abolishes primogeniture, 46; cession of western claims to United States, 58, 59, 62; agreement with Maryland, 100; and Annapolis Trade Convention, 100–01, 103–04; ratification of Constitution, 150, 155–156, 157
Virginia Plan, 117–19, 121–22, 123, 126–27, 144
Virginia Resolutions, *see* Virginia Plan

W

Warden, John, Grigsby's story of, 15–16
Warville, Brissot de, quoted, 32–33
Washington, George, invests in western land, 61; influence over disaffected soldiers, 82–83; in Federal Convention, 110–11; and Madison, 111; and Morris, 113 (note); chosen as President, 139; Lincoln's letter to, 152–53;

Washington, George—*Cont'd*
  supports Constitution, 155; personal charge against, 161; letter to Lafayette, 164–65; inauguration, 166
Washington, name given division of Northwest Territory, 69
Webster, Daniel, on Ordinance of 1787, 79–80
West Indies, trade with, 23, 27, 97
Whig party, 146–47
Wilson, James, 61, 108, 112, 115, 124, 132
Wythe, George, 63, 112

Y

Yates, Robert, 116

PART II

WASHINGTON AND HIS COLLEAGUES

A CHRONICLE
OF THE RISE AND FALL OF FEDERALISM

BY
HENRY JONES FORD

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CONTENTS

I. AN IMITATION COURT Page 1

II. GREAT DECISIONS " 26

III. THE MASTER BUILDER " 54

IV. ALARUMS AND EXCURSIONS " 80

V. TRIBUTE TO THE ALGERINES " 104

VI. FRENCH DESIGNS ON AMERICA " 115

VII. A SETTLEMENT WITH ENGLAND " 147

VIII. PARTY VIOLENCE " 164

IX. THE PERSONAL RULE OF JOHN ADAMS " 195

BIBLIOGRAPHICAL NOTE " 227

INDEX " 231

WASHINGTON AND HIS COLLEAGUES

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CHAPTER I

AN IMITATION COURT

WASHINGTON was glad to remain at Mount Vernon as long as possible after he had consented to serve as President, enjoying the life of a country gentleman, which was now much more suited to his taste than official employment. He was weary of public duties and the heavy demands upon his time which had left him with little leisure for his private life at home. His correspondence during this period gives ample evidence of his extreme reluctance to reassume public responsibilities. To bring the matter to its true proportions, it must be remembered that to the view of the times the new constitution was but the latest attempt to tinker the federal scheme, and it was yet to be seen whether this endeavor would be any more successful than previous efforts had been. As for the title of President, it had already been borne by a number of congressional politicians and had been rather tarnished by the behavior of some of them. Washington was not at all eager to move in the matter before he had to, and he therefore remained on his farm until Congress met, formally declared the result of the election, and sent a committee to Mount Vernon to give him official notice. It was not until April 30, 1789, that he was formally installed as President.

Madison and Hamilton were meanwhile going ahead with their plans. This time was perhaps the happiest in their lives. They had stood together in years of struggle to start the movement for a new constitution, to steer it through the convention, and to force it on the States. Although the fight had been a long and a hard one, and although they had not won all that they had wanted, it was nevertheless a great satisfaction that they had accomplished so much, and they were now applying themselves with great zest to the organization of the new government. Madison was a member of Congress; Hamilton lived near the place where Congress held its sittings in New York and his house was a rendezvous for the federal leaders. Thither Madison would often go to talk over plans and prospects. A lady who lived near by has related how she often saw them walking and talking together, stopping sometimes to have fun with a monkey skipping about in a neighbor's yard.

At that time Madison was thirty-eight; Hamilton was thirty-two. They were little men, of the quick, dapper type. Madison was five feet six and a quarter inches tall, slim and delicate in physique, with a pale student's face lit up by bright hazel eyes. He was as plain as a Quaker in his style of dress, and his hair, which was light in color, was brushed straight back and gathered into a small queue, tied with a plain ribbon. Hamilton was of about the same stature, but his figure had wiry strength. His Scottish ancestry was manifest in his ruddy complexion and in the modeling of his features. He was more elegant than Madison in his habitual attire. He had a very erect, dignified bearing; his expression was rather severe when his features were in repose, but he had a smile of flashing radiance when he was pleased and interested. Washington, who stood over six feet two inches in his buckled shoes, had to look down over his nose when he met the young statesmen who had been the wheel horses of the federal movement.

Soon after Washington arrived in New York he sought Hamilton's aid in the management of the national finances. There was the rock on which the government of the Confederation had foundered. There the most skillful pilotage was required if the new government was to make a safe voyage. Washington's first thought had been to get Robert Morris to take charge again of the department that he had formerly managed with conspicuous ability, and while stopping in Philadelphia on his way to New York, he had approached Morris on the subject. Morris, who was now engaged in grand projects which were eventually to bring him to a debtor's prison, declined the position but strongly recommended Hamilton. This suggestion proved very acceptable to Washington, who was well aware of Hamilton's capacity.

The thorny question of etiquette was the next matter to receive Washington's attention. Personally he favored the easy hospitality to which he was accustomed in Virginia, but he knew quite well that his own taste ought not to be decisive.

The forms that he might adopt would become precedents, and hence action should be taken cautiously. Washington was a methodical man. He had a well-balanced nature which was never disturbed by timidity of any kind and rarely by anxiety. His anger was strong when it was excited, but his ordinary disposition was one of massive equanimity. He was not imaginative, but he took things as they came, and did what the occasion demanded. In crises that did not admit of deliberation, his instinctive courage guided his behavior, but such crises belong to military experience, and in civil life careful deliberation was his rule. It was his practice to read important documents pen in hand to note the points. From one of his familiar letters to General Knox we learn that on rising in the morning he would turn over in his mind the day's work and would consider how to deal with it. His new circumstances soon apprised him that the first thing to be settled was his deportment as President. Under any form of government the man who is head of the state is forced, as part of his public service, to submit to public exhibition and to be exact in social observance; but, unless precautions are taken, engagements will consume his time and strength. Writing to a friend about the situation in which he found himself, Washington declared: "By the time I had done breakfast, and thence till dinner, and afterwards till bed-time, I could not get relieved from the ceremony of one visit, before I had to attend to another. In a word, I had no leisure to read or answer the dispatches that were pouring in upon me from all quarters."

The radical treatment which the situation called for was aided by a general feeling in Congress that arrangements should be made for the President different from those under the Articles of Confederation. It had been the practice for the President to keep open house. Of this custom Washington remarked that it brought the office "in perfect contempt; for the table was considered a public one, and every person, who could get introduced, conceived that he had a right to be invited to it. This, although the table was always crowded (and with mixed company, and the President considered in no better light than as a *maître d'hôtel*), was in its nature impracticable, and as many offenses given as if no table had been kept." It was important to settle the matter before Mrs. Washington joined him in New York. Inside of ten days from the time he took the oath of office, he therefore drafted a set of nine queries, copies of which he sent to Jay, Madison, Hamilton, and John Adams, with these sensible remarks:

"Many things, which appear of little importance in themselves and at the beginning, may have great and durable consequences from their having been established at the commencement of a new general government. It will be much easier to commence the Administration upon a well-adjusted system, built on tenable grounds, than to correct errors, or alter inconveniences, after they shall have been confirmed by habit. The President, in all matters of business and etiquette, can have no object but to demean himself in his public character in such a manner as to maintain the dignity of his office, without subjecting himself to the imputation of superciliousness or unnecessary reserve. Under these impressions he asks for your candid and undisguised opinion."

Only the replies of Hamilton and Adams have been preserved. Hamilton advised Washington that while "the dignity of the office should be supported . . . care will be necessary to avoid extensive disgust or discontent. . . . The notions of equality are yet, in my opinion, too general and strong to admit of such a distance being placed between the President and other branches of the Government as might even be consistent with a due proportion." Hamilton then sketched a plan for a weekly levee: "The President to accept no invitations, and to give formal entertainments only twice or four times a year, the anniversaries of important events of the Revolution." In addition, "the President on levee days, either by himself or some gentleman of his household, to give informal invitations to family dinners . . . not more than six or eight to be invited at a time, and the matter to be confined essentially to members of the legislature and other official characters. The President never to remain long at table." Hamilton observed that his views did not correspond with those of other advisers, but he urged the necessity of behaving so as "to remove the idea of too immense inequality, which I fear would excite dissatisfaction and cabal."

This was sagacious advice, and Washington would have benefited by conforming to it more closely than he did. The prevailing tenor of the advice which he received is probably reflected in the communication from Adams, who was in favor of making the government impressive through grand ceremonial. "Chamberlains, aides-de-camp, secretaries, masters of ceremonies, etc., will become necessary. . . . Neither dignity nor authority can be supported in human minds, collected into nations or any great numbers, without a splendor and majesty in some degree proportioned to them." Adams held that in no case would it be "proper for the President to make any formal public entertainment," but that this should be the function of some minister of state, although "upon such occasions the President, in his private character, might honor with his presence." The President might invite to his house in small parties what official characters or citizens of distinction he pleased, but this invitation should always be given without formality. The President should hold levees to receive "visits of compliment," and two days a week might not be too many for this purpose. The idea running through Adams's advice was that in his private character the President might live like any other private gentleman of means, but that in his public functions he should adopt a grand style. This advice, which Washington undoubtedly received from others as well as Adams, influenced Washington's behavior, and the consequences were exactly what Hamilton had predicted. According to Jefferson's recollection, many years afterward, Washington told him that General Knox and Colonel Humphreys drew up the regulations and that some were proposed "so highly strained that he absolutely rejected them." Jefferson further related that, when Washington was re-elected, Hamilton took the position that the parade of the previous inauguration ought not to be repeated, remarking that "there was too much ceremony for the character of our government."

It is a well-known characteristic of human nature to be touchy about such matters as these. Popular feeling about Washington's procedure was inflamed by reports of the grand titles which Congress was arranging to bestow upon the President. That matter was, in fact, considered by the Senate on the very day of Washington's arrival in New York and before any steps could have been taken to ascertain his views. A joint committee of the two houses reported against annexing "any style or title to the respective styles or titles of office expressed in the Constitution." But a group of Senators headed by John Adams was unwilling to let the matter drop, and another Senate committee was appointed which recommended as a proper style of address

"His Highness, the President of the United States of America, and Protector of their Liberties." While the Senate debated, the House acted, addressing the President in reply to his inaugural address simply as "The President of the United States." The Senate now had practically no choice but to drop the matter, but in so doing adopted a resolution that because of its desire that "a due respect for the majesty of the people of the United States may not be hazarded by singularity," the Senate was still of the opinion "that it would be proper to annex a respectable title to the office." Thus it came about that the President of the United States is distinguished by having no title. A governor may be addressed as "Your Excellency," a judge as "Your Honor," but the chief magistrate of the nation is simply "Mr. President." It was a relief to Washington when the Senate discontinued its attempt to decorate him. He wrote to a friend, "Happily this matter is now done with, I hope never to be revived."

Details of the social entanglements in which Washington was caught at the outset of his administration are generally omitted by serious historians, but whatever illustrates life and manners is not insignificant, and events of this character had, moreover, a distinct bearing on the politics of the times. The facts indicate that Washington's arrangements were somewhat encumbered by the civic ambition of New York. That bustling town of 30,000 population desired to be the capital of the nation, and, in the splendid exertions which it made, it went rather too far. Federal Hall, designed as a City Hall, was built in part for the accommodation of Congress, on the site in Wall Street now in part occupied by the United States Sub-Treasury. The plans were made by Major Pierre Charles l'Enfant, a French engineer who had served with distinction in the Continental Army but whose clearest title to fame is the work which he did in laying out the city of Washington when it was made the national capital. Federal Hall exceeded in dignified proportions and in artistic design any public building then existing in America. The painted ceilings, the crimson damask canopies and hangings, and the handsome furniture were considered by many political agitators to be a great violation of republican simplicity. The architect was first censured in the public press and then, because of disputes, received no pay for his time and trouble, although, had he accepted a grant of city lots offered by the town council he would have received a compensation that would have turned out to be very valuable.

Federal Hall had been completed and presented to Congress before Washington started for New York. The local arrangements for his reception were upon a corresponding scale of magnificence, but with these Washington had had nothing to do. The barge in which he was conveyed from the Jersey shore to New York was fifty feet long, hung with red curtains and having an awning of satin. It was rowed by thirteen oarsmen, in white with blue ribbons. In the inauguration ceremonies Washington's coach was drawn by four horses with gay trappings and hoofs blackened and polished. This became his usual style. He seldom walked in the street, for he was so much a public show that that might have been attended by annoying practical inconvenience; but when he rode out with Mrs. Washington his carriage was drawn by four — sometimes six — horses, with two outriders, in livery, with powdered hair and cockades in their hats. When he rode on horseback, which he often did for exercise, he was attended by outriders and accompanied by one or more of the gentlemen of his household. Toward the end of the year there arrived from England the state coach which he used in formal visits to Congress and for other ceremonious events. It was a canary-colored chariot, decorated with gilded nymphs and cupids, and emblazoned with the Washington arms. His state was simplified when he went to church, which he did regularly every Sunday; then his coach was drawn by two horses, with two footmen behind, and was followed by a post-chaise carrying two gentlemen of his household. Washington was fond of horses and was in the habit of keeping a fine stable. The term "muslin horses" was commonly used to denote the care taken in grooming. The head groom would test the work of the stable-boys by applying a clean muslin handkerchief to the coats of the animals, and, if any stain of dirt showed, there was trouble. The night before the white horses which Washington used as President were to be taken out, their coats were covered by a paste of whiting, and the animals were swathed in wrappings. In the morning the paste was dry and with rubbing gave a marble gloss to the horses' coats. The hoofs were then blackened and polished, and even the animals' teeth were scoured. Such arrangements, however, were not peculiar to Washington's stable. This was the usual way in which grooming for "the quality" was done in that period.

The first house occupied by Washington was at the corner of Pearl and Cherry streets, then a fashionable locality. What the New York end of the Brooklyn Bridge has left of it is now known as Franklin Square. The house was so small that three of his secretaries had to lodge in one room; and Custis in his Recollections tells how one of them, who fancied he could write poetry, would sometimes disturb the others by walking the floor in his nightgown trying the rhythm of his lines by rehearsing them with loud emphasis. About a year later Washington removed to a larger house on the west side of Broadway near Bowling Green. Both buildings went down at an early date before the continual march of improvement in New York. In Washington's time Wall Street was superseding Pearl Street as the principal haunt of fashion. Here lived Alexander Hamilton and other New Yorkers prominent in their day; here were fashionable boarding-houses at which lived the leading members of Congress. When some fashionable reception was taking place, the street was gay with coaches and sedan-chairs, and the attire of the people who then gathered was as brilliant as a flight of cockatoos. It was a period of spectacular dress and behavior for both men and women, the men rivaling the women in their use of lace, silk, and satin. Dr. John Bard, the fashionable doctor of his day, who attended Washington through the severe illness which laid him up for six weeks early in his administration, habitually wore a cocked hat and a scarlet coat, his hands resting upon a massive cane as he drove about in a pony-phaeton. The scarlet waistcoat with large bright buttons which Jefferson wore on fine occasions, when he arrived on the scene, showed that he was not then averse to gay raiment. Plain styles of dress were among the many social changes ushered in by the French Revolution and the war cycle that ensued from it.

Titles figured considerably in colonial society, and the Revolutionary War did not destroy the continuity of usage. It was quite in accord with the fashion of the times that the courtesy title of Lady Washington was commonly employed in talk about the President's household. Mrs. Washington arrived in New York from Mount Vernon on May 27, 1789. She was met by the President with his barge on the Jersey shore, and as the barge passed the Battery a salute of thirteen cannon was fired. At the landing-place a large company was gathered, and the coach that took her to her home was escorted with military parade. The questions of etiquette had been settled by that time, and she performed her social duties with the ease of a Virginia gentlewoman always used to good society. She found them irksome, however, as such things had long since lost their novelty. Writing to a friend she said, "I think I am more like a state prisoner than anything else." She was then a grandmother through her children by her first husband. Although she preferred plain attire, she is described on one occasion as wearing a velvet gown over a white satin petticoat, her hair smoothed back over a moderately high cushion. It was the fashion of the times for the ladies to tent their hair up to a great height. At one of Mrs. Washington's receptions, Miss McIvers, a New York belle, had such a towering coiffure that the feathers which surmounted it brushed a lighted chandelier and caught fire. The consequences might have been serious had the fire spread to the pomatumed structure below, but one of the President's aides sprang to the rescue and smothered the burning plumes between the palms of his hands before any harm came to the young lady.

Every Tuesday while Congress was in session Washington received visitors from three to four o'clock. These receptions were known as his levees. He is described as clad in black velvet; his hair was powdered and gathered behind in a silk bag; he wore knee and shoe buckles and yellow gloves; he held a cocked hat with a cockade and a black feather edging; and he carried a long sword in a scabbard of white polished leather. As visitors were presented to him by an aide, Washington made a bow. To a candid friend who reported to him that his bows were considered to be too stiff, he replied: "Would it not have been better to throw the veil of charity over them, ascribing their stiffness to the effects of age, or to the unskillfulness of my teacher, rather than to pride and dignity of office, which God knows has no charm for me?" Washington bore with remarkable humility the criticisms of his manners that occasionally reached him.

On Friday evenings Mrs. Washington received, and these affairs were known as her "drawing-rooms." They were over by nine o'clock which was bed-time in the Washington household; for

Washington was an early riser, often getting up at four in the morning to start the day's work betimes. The "drawing-rooms" were more cheery affairs than the levees, as Mrs. Washington had simple unaffected manners, and the General had made it known that on these occasions he desired to be regarded not as the President but simply as a private gentleman. This gave him an opportunity such as he did not have at the levees to unbend and to enjoy himself. Besides these receptions a series of formal dinners was given to diplomatic representatives, high officers of government, and members of Congress. Senator Maclay of Pennsylvania recorded in the diary he kept during the First Congress that Washington would drink wine with every one in the company, addressing each in turn by name. Maclay thought it of sufficient interest to record that on one occasion a trifle was served which had been made with rancid cream. All the ladies watched to see what Mrs. Washington would do with her portion; and next day there were tittering remarks all through the fashionable part of the town over the fact that she had martyred herself and swallowed the dose. Incidentally Maclay, who was in nearly everything a vehement opponent of the policy of the Administration, bore witness to Washington's perfect courtesy. Maclay noted that in spite of his antagonistic attitude Washington invited him to dinner and paid him "marked attention," although "he knows enough to satisfy him that I will not be Senator after the 3d of March, and to the score of his good nature must I place these attentions."

In his relations with Congress, Washington followed precedents derived from the English constitutional system under which he had been educated. No question was raised by anybody at first as to the propriety of a course with which the public men of the day were familiar. He opened the session with an address to Congress couched somewhat in the style of the speech from the throne. At the first session there was talk of providing some sort of throne for him; but the proposal came to nothing. He spoke from the Vice-President's chair, and the Representatives went into the Senate chamber to hear him, as the Commons proceed to the House of Lords on such occasions. Congress, too, conformed to English precedents by voting addresses in reply, and then the members repaired to the President's "audience chamber," where the presiding officers of the two houses delivered their addresses and received the President's acknowledgments. These were disagreeable duties for Washington, although he discharged them conscientiously. Maclay has recorded in his diary the fact that when Washington made his first address to Congress he was "agitated and embarrassed more than ever he was by the leveled cannon or pointed musket."

It was not until June 8 that Washington settled these delicate affairs of official etiquette sufficiently to enable him to attend to details of administration. The government, although bankrupt, was in active operation, and the several executive departments were under secretaries appointed by the old Congress. The distinguished New York jurist, John Jay, now forty-four years old, had been Secretary of Foreign Affairs since 1784. He had long possessed Washington's confidence, and now retained his Secretaryship until the government was organized, whereupon he left that post to become the first chief-justice of the United States. Henry Knox of Massachusetts, aged thirty-nine, had been Secretary of War since 1785, a position to which Washington helped him. They were old friends, for Knox had served through the war with Washington in special charge of artillery. The Postmaster-General, Ebenezer

Hazard, was not in Washington's favor. While the struggle over the adoption of the Constitution was going on Hazard put a stop to the customary practice by which newspaper publishers were allowed to exchange copies by mail. Washington wrote an indignant letter to John Jay about this action which was doing mischief by "inducing a belief that the suppression of intelligence at that critical juncture was a wicked trick of policy contrived by an aristocratic junto." As soon as Washington could move in the matter, Hazard was superseded by Samuel Osgood, who as a member of the old Congress had served on a committee to examine the post-office accounts. There was no Secretary of the Treasury at that time, but the affairs of that department were in the hands of a board of commissioners,—this same Samuel Osgood, together with Walter Livingston and Arthur Lee. To all these officials Washington now applied for a written account of "the real situation" of their departments.

Several months elapsed before he was in a position to make new arrangements. The salary bill was approved September 2, 1789, and on the same day Washington commissioned Hamilton as Secretary of the Treasury, — the first of the new appointments, although in the creative enactments the Treasury Department came last. Next came Henry Knox, Secretary of War and of the Navy, on September 12; Thomas Jefferson, Secretary of State; and Edmund Randolph, Attorney-General, on September 26, on which date Osgood was also appointed. What may be said to be Washington's Cabinet was thus established, but the term itself did not come into use until 1793. At the outset no more was decided than that the new government should have executive departments, and in superficial appearance these were much like those of the old government. The Constitution made no distinct provision for a cabinet, and the only clause referring to the subject is the provision authorizing the President to "require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." This provision does not contemplate a body that should be consultative by its normal character. The prevailing opinion at the time the Constitution was framed was that the consultative function would be exercised by the Senate, which together with the President would form the Administration. Upon this ground, Mason of Virginia refused to sign the report of the constitutional convention. It was owing to practical experience and not to the language of the Constitution that the President was soon repelled from using the Senate as his privy council and was thrown back upon the aid of the heads of the executive departments, who were thus drawn close to him as his Cabinet.[1]

The inchoate character of the Cabinet for a considerable period explains what might otherwise seem to be an anomaly, — the delay of Jefferson in occupying his post. He did not arrive until March 21, 1790, when Washington had been in office nearly a year. But this situation occasioned no remark. The notion that the heads of the departments formed a cabinet, taking office with the President and reflecting his personal choice as his advisers, was not developed until long after Washington's administration, although the Cabinet itself, as a distinct feature of the system of government, dates from his first term. The importance which the Cabinet soon acquired is evidence that, even under a written constitution, institutions owe more to circumstances than to intentions. The Constitution of the United States is no exception to the rule that the true constitution of a country is the actual distribution of power, written provisions being efficacious only in the way and to the extent that they affect such distribution in practice. Hence results may differ widely from the expectations with which those provisions are introduced. A constitution is essentially a growth and never merely a contrivance.

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[1] In this formative process the Postmaster-General was left outside in Washington's time, since his functions were purely of a business nature, not directly affected by the issues on which Washington desired advice. The Postmaster-General did not become a member of the Cabinet until 1829.

CHAPTER II

GREAT DECISIONS

WHILE Washington was bearing with military fortitude the rigors and annoyances of the imitation court in which he was confined, Congress reached decisions that had a vast effect in determining the actual character of the government. The first business in order of course was the raising of revenue, for the treasury was empty, and payments of interest due on the French and Spanish loans were years behind. Madison attacked this problem before Washington arrived in New York to take the oath of office. On April 8 he introduced in the House a resolution which aimed only at giving immediate effect to a scheme of duties and imposts that had been approved generally by the States in 1783. On the very next day debate upon this resolution began in the committee of the whole, for there was then no system of standing committees to intervene between the House and its business. The debate soon broadened out far beyond the lines of the original scheme, and in it the student finds lucidly presented the issues of public policy that have accompanied tariff debates ever since.

Madison laid down the general principle that "commerce ought to be free, and labor and industry left at large to find its proper object," but suggested that it would be unwise to apply this principle without regard to particular circumstances. "Although interest will, in general, operate effectually to produce political good, yet there are causes in which certain factitious circumstances may divert it from its natural channel, or throw or retain it in an artificial one." In language which now reads like prophecy he referred to cases "where cities, companies, or opulent individuals engross the business from others, by having had an uninterrupted possession of it, or by the extent of their capitals being able to destroy a competition." The same situation could occur between nations, and had to be considered. There was some truth, he also thought, in the opinion "that each nation should have within itself the means of defense, independent of foreign supplies," but he considered that this argument had been urged beyond reason, as "there is good reason to believe that, when it becomes necessary, we may obtain supplies abroad as readily as any other nation whatsoever." He instanced as a cogent reason in favor of protective duties that, as the States had formerly the power of making regulations of trade to cherish their domestic interests, it must be presumed that, when they put the exercise of this power into other hands by adopting the Constitution, "they must have done this with the expectation that those interests would not be neglected" by Congress.

Actuated by such views, and doubtless also influenced by the great need for revenue, Madison was on the whole favorable to amendments extending the list of dutiable articles. Though there were conflicts between members from manufacturing districts and those from agricultural constituencies, and though the salt protectionists of New York had some difficulty in carrying their point, the contention did not follow sectional lines. Coal was added to the list on the motion of a member from Virginia. The duties levied were, however, very moderate, ranging from five to twelve and one-half per cent, with an exception in the case of one article that might be considered a luxury.

The bill as it passed the House discriminated in favor of nations with which the United States had commercial treaties. That is to say, it favored France and Holland as against Great Britain, which had the bulk of America's foreign trade. Though Madison insisted on this provision and was supported by a large majority of the House, the Senate would not agree to it. During the early sessions of Congress the Senate met behind closed doors, a practice which it did not abandon until five years later. From the accounts of the discussion preserved in Maclay's diary it appears that there was much wrangling. Maclay relates that on one occasion when Pennsylvania's demands were sharply attacked, his colleague, Robert Morris, was so incensed that Maclay "could see his nostrils widen and his nose flatten like the head of a viper." Pierce Butler of South Carolina "flamed away and threatened a dissolution of the Union, with regard to his State, as sure as God was in the firmament." Thus began a line of argument that was frequently pursued thereafter until it was ended by wager of battle. On several occasions the division was so close that Vice-President Adams gave the casting vote. Although there was much railing in the Senate against imposts as a burden to the agricultural sections, yet some who opposed duties in the abstract thought of particulars that ought not to be neglected if the principle of protection were admitted. Duties on hemp and cotton therefore found their way into the bill through amendments voted by the Senate. Adjustment of the differences between the two houses was hindered by the resentment of the House at the removal of the treaty discrimination feature, but the Senate with characteristic address evaded the issue by promising to deal with it as a separate measure and ended by thwarting the House on that point.

On the whole, in view of the sharp differences of opinion, the action taken on the tariff was remarkably expeditious. The bill, which passed the House on May 16, was passed by the Senate on June 2, and although delay now ensued because of the conflict over the discrimination issue, the bill became law by the President's approval on July 4. This prompt conclusion in spite of closely-balanced factions becomes more intelligible when it is observed that the rules of the Senate then provided that, "in case of a debate becoming tedious, four Senators may call for the question."

Brief as was the period of consideration as compared with the practice since that day, Maclay noted indignantly that the merchants had "already added the amount of the duties to the price of their goods" so that a burden fell upon the consumers without advantage to the Treasury. Such consequence is evidence of defect in procedure which the experience of other nations has led them to correct, but which has continued to increase in the United States until it has attained monstrous proportions. Under the English budget system new imposts now take effect as soon as they are proposed by the government, the contingency of alteration in the course of enactment being provided for by return of payments made in error. The general tendency of civilized government is now strongly in favor of attaching the process of deliberation upon financial measures to the period of their administrative incubation, and of shortening the period of formal legislative consideration.

One of the tasks of Congress in its first session was to draught amendments to the Constitution. The reasons for such action were stated by Madison to be a desire to propitiate those who desired a bill of rights, and an effort to secure acceptance of the Constitution in Rhode Island and North Carolina. Promises had been made, in the course of the struggle for adoption, that this matter would be taken up, and there was a general willingness to proceed with it. Under the leadership of Madison, the House adopted seventeen amendments, which were reduced by the Senate to twelve. Of these, ten were eventually ratified and formed what is commonly known as the Bill of Rights.

Apart from this matter, the session, which lasted until September 29, was almost wholly occupied with measures to organize the new government. To understand the significance of the action taken, it should be remembered that the passions excited by the struggle over the new Constitution were still turbulent. Fisher Ames of Massachusetts, a member without previous national experience, who watched the proceedings with keen observation, early noticed the presence of a group of objectors whose motives he regarded as partly factious and partly temperamental. Writing to a friend about the character of the House, he remarked: "Three sorts of people are often troublesome: the anti-federals, who alone are weak and some of them well disposed; the dupes of local prejudices, who fear eastern influence, monopolies, and navigation acts; and lastly the violent republicans, as they think fit to style themselves, who are new lights in politics, who are more solicitous to establish, or rather to expatiate upon, some sounding principle of republicanism, than to protect property, cement the union, and perpetuate liberty." The spirit of opposition had from the first an experienced leader in Elbridge Gerry of Massachusetts. He had seen many years of service in the Continental Congress which he first entered in 1776. He was a delegate to the Philadelphia convention, in whose sessions he showed a contentious temper, and in the end refused to subscribe to the new Constitution. In the convention debates he had strongly declared himself "against letting the heads of the departments, particularly of finance, have anything to do with business connected with legislation." Defeated in the convention, Gerry was now bent upon making his ideas prevail in the organization of the government.

On May 19, the matter of the executive departments was brought up in committee of the whole by Boudinot of New Jersey. At this time it was the practice of Congress to take up matters first in committee of the whole, and, after general conclusions had been reached, to appoint a committee to prepare and bring in a bill. A warm discussion ensued on the question whether the heads of the departments should be removable by the President. Gerry, who did not take a prominent part in the debate, spoke with a mildness that was in marked contrast with the excitement shown by some of the speakers. He was in favor of supporting the President to the utmost and of making him as responsible as possible, but since Congress had obviously no right to confer a power not authorized by the Constitution, and since the Constitution had conditioned appointments on the consent of the Senate, it followed that removals must be subject to the same condition. He spoke briefly and only once, although the debate became long and impassioned. But he was merely reserving his fire, as subsequent developments soon showed. Without a call for the ayes and nays, the question was decided in favor of declaring the power of removal to be in the President. The committee then proceeded to the consideration of the Treasury Department. Gerry at once made a plea for delay. "He thought they were hurrying on business too rapidly. Gentlemen had already committed themselves on one very important point." He "knew nothing of the system which gentlemen proposed to adopt in arranging the Treasury Department," but the fact was worth considering that "the late Congress had, on long experience, thought proper to organize the Treasury Department, in a mode different from that now proposed." He "would be glad to know what the reasons were that would induce the committee to adopt a different system from that which had been found most beneficial to the United States."

What Gerry had in view was the retention of the then existing system of Treasury management by a Board of Commissioners. In 1781 the Continental Congress had been forced to let the Treasury pass out of its own hands into those of a Superintendent of Finance, through sheer inability to get any funds unless the change was made. Robert Morris, who held the position, had resigned in January, 1783, because of the behavior of Congress, but the attitude of the army had become so menacing that he was implored to remain in office and attend to the arrears of military pay. He had managed to effect a settlement, and at length retired from office on November 1, 1784. Congress then put the Treasury in the hands of three commissioners appointed and supervised by it. Gerry was now striving to continue this arrangement with as little change as possible.

When debate was resumed the next day, Gerry made a long, smooth speech on the many superior advantages of the Board system. The extent and variety of the functions of the office would be a trial to any one man's integrity. "Admit these innumerable opportunities for defrauding the revenue, without check or control, and it is next to impossible he should remain unsullied in reputation, or innoxious with respect to misapplying his trust." The situation would be "very disagreeable to the person appointed, provided he is an honest, upright man; it will be disagreeable also to the people of the Union, who will always have reason to suspect" misconduct. "We have had a Board of Treasury and we have had a Financier. Have not express charges, as well as vague rumors, been brought against him at the bar of the public? They may be unfounded, it is true; but it shows that a man cannot serve in such a station without exciting popular clamor. It is very well known, I dare say, to many gentlemen in this House, that the noise and commotion were such as obliged Congress once more to alter their Treasury Department, and place it under the management of a Board of

Commissioners." He descanted upon the perils to liberty involved in the course they were pursuing. Surround the President with Ministers of State and "the President will be induced to place more confidence in them than in the Senate. . . . An oligarchy will be confirmed upon the ruin of the democracy; a government most hateful will descend to our posterity and all our exertions in the glorious cause of freedom will be frustrated."

Gerry's speech as a whole was tactful and persuasive, but he made a blunder when he appealed to the recollections of the old members, men who had been in the Continental Congress, or else in some position where they could view its springs of action. Their recollections now came forward to his discomfiture. "My official duty," said Wadsworth of Connecticut, "has led me often to attend at the Treasury of the United States, and, from my experience, I venture to pronounce that a Board of Treasury is the worst of all institutions. They have doubled our national debt." He contrasted the order and clearness of accounts while the Superintendent of Finance was in charge with the situation since then. If the committee had before them the transactions of the Treasury Board, "instead of system and responsibility they would find nothing but confusion and disorder, without a possibility of checking their accounts." Boudinot of New Jersey said he "would state a circumstance which might give the committee some small idea of what the savings under the Superintendent were. The expenditure of hay at a certain post was one hundred and forty tons; such was the estimate laid before him; yet twelve tons carried the post through the year, and the supply was abundant, and the post was as fully and usefully occupied as it had ever been before." Of course there was an outcry against the Superintendent of Finance; "he rather wondered that the clamor was not more loud and tremendous." He remembered that "one hundred and forty-six supernumerary officers were brushed off in one day, who had long been sucking the vital blood and spirit of the nation. Was it to be wondered at, if this swarm should raise a buzz about him?" Gerry fought on almost singlehanded, but he could not refute the evidence that he had invited. He lost his temper and resorted to sarcasm. If a single head of the Treasury was so desirable, why not "have a single legislator; one man to make all the laws, the revenue laws particularly, because among many there is less responsibility, system, and energy; consequently a numerous representation in this House is an odious institution."

The case for the Treasury Board was so hopeless that nothing more was heard of it; but the battle over the removal question was renewed with added violence, when the bill for establishing the Department of Foreign Affairs came up for consideration. White of Virginia now led the attack. He had been a member of the Continental Congress from 1786 to 1788, and a member of the ratifying convention of his State. Although he voted for a provisional acceptance of the Constitution, he had supported an amendment requiring Congress to collect direct taxes or excises through State agency, which would have been in effect a return to the plan of requisitions — the bane of the Confederation. In an elaborate speech he attacked the clause giving the President power to remove from office, as an attempt to impart an authority not conferred by the Constitution, and inconsistent with the requirement that appointments should be made with the advice and consent of the Senate. The debate soon became heated. "Let us look around at this moment," said Jackson of Georgia, "and see the progress we are making toward venality and corruption. We already hear the sounding title of *Highness* and *Most Honorable* trumpeted in our ears, which, ten years since, would have exalted a man to a station as high as Haman's gibbet." Page of Virginia was ablaze with indignation. "Good God!" he exclaimed. "What, authorize in a free republic, by law, too, by your first act, the exertion of a dangerous royal prerogative in your Chief Magistrate!" Gerry, in remarks whose oblique criticism upon arrangements at the President's house was perfectly well understood, dwelt upon the possibility that the President might be guided by some other criterion than discharge of duty as the law directs. "Perhaps the officer is not good natured enough; he makes an ungraceful bow, or does it left leg foremost; this is unbecoming in a great officer at the President's levee. Now, because he is so unfortunate as not to be so good a dancer as he is a worthy officer, he must be removed." These rhetorical flourishes, which are significant of the undercurrent of sentiment, hardly do justice to the general quality of the debate which was marked by legal acuteness on both sides. Madison pressed home the sensible argument that the President could not be held to responsibility unless he could control his subordinates. "And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and for want of efficacy reduce the power of the President to a mere vapor; in which case, his responsibility would be annihilated and the expectation of it unjust."

The debate lasted for several days, but Madison won by a vote of 34 to 20 in committee, in favor of retaining the clause. On second thought, however, and probably after consultation with the little group of constructive statesmen who stood behind the scenes, he decided that it might be dangerous to allow the President's power of removal to rest upon a legislative grant that might be revoked. When the report from the committee of the whole was taken up in the House, a few days later, Benson of New York proposed that the disputed clause should be omitted and the language of the bill should be worded so as to imply that the power of removal was in the President. Madison accepted the suggestion, and the matter was thus settled. The point was covered by providing that the chief clerk of the Department should take charge "whenever the principal officer shall be removed from office by the President." The clause got through the Senate by the casting vote of the Vice-President, and a similar provision was inserted, without further contest, in all the acts creating the executive departments. It is rather striking evidence of the Utopian expectations which could then be indulged that Daniel Carroll of Maryland was persistent in urging that the existence of the office should be limited to a few years, "under a hope that a time would come when the United States would be disengaged from the necessity of supporting a Secretary of Foreign Affairs." Although Gerry and others expressed sympathy with the motion it was voted down without a division.

When the bill establishing the Treasury Department was taken up, Page of Virginia made a violent attack upon the clause authorizing the Secretary to "digest and report plans." He denounced it as "an attempt to create an undue influence" in the House. "Nor would the mischief stop here; it would establish a precedent which might be extended until we admitted all the Ministers of the government on the floor, to explain and support the plans they have digested and reported; thus laying the foundation for an aristocracy or a detestable monarchy." As a matter of fact, a precedent in favor of access to Congress already existed. The old Superintendent of Finance and the Board which succeeded him had the power now proposed for the Secretary of the Treasury. Livermore of New Hampshire, who had been a member of the Continental Congress, admitted this fact, but held that such power was not dangerous at that time since Congress then possessed both legislative and executive authority. They could abolish his plans and his office together, if they thought proper; "but we are restrained by a Senate and by the negative of the President." Gerry declared his assent to the views expressed by Page. "If the doctrine of having prime and great ministers of state was once well established, he did not doubt but that we should soon see them distinguished by a green or red ribbon, or other insignia of court favor and patronage."

The strongest argument in favor of retaining the clause referred to was made by Fisher Ames, who had begun to display the powers of clear statement and of convincing argument that soon established his supremacy in debate. He brought the debate at once to its proper bearings by pointing out that there were really only two matters to be considered: whether the proposed arrangement was useful, and whether it could be safely guarded from abuse. "The Secretary is presumed to acquire the best knowledge of the subject of finance of any member of the community. Now, if this House is to act on the best knowledge of circumstances, it seems to follow logically that the House must obtain the evidence from that officer; the best way of doing this will be publicly from the officer himself, by making it his duty to furnish us with it." In one of those eloquent passages which brighten the records of debate whenever Ames spoke at any length, he pictured the difficulties that had to be surmounted. "If we consider the present situation of our finances, owing to a variety of causes, we shall no doubt perceive a great, although unavoidable confusion throughout the whole scene; it presents to the imagination a deep, dark, and dreary chaos; impossible to be reduced to order without the mind of the architect is clear and capacious, and his power commensurate to the occasion." He asked, "What improper influence could a plan reported openly and officially have on the mind of any member, more than if the scheme and information were given privately at the Secretary's office?" Merely to call for information would not be advantageous to the

House. "It will be no mark of inattention or neglect, if he take time to consider the questions you propound; but if you make it his duty to furnish you plans . . . and he neglect to perform it, his conduct or capacity is virtually impeached. This will be furnishing an additional check."

Sedgwick of Massachusetts made a strong speech to the same effect. "Make your officer responsible," he said with prophetic vision, "and the presumption is, that plans and information are properly digested; but if he can secrete himself behind the curtain, he might create a noxious influence, and not be answerable for the information he gives."

The weight of the argument was heavily on the side of the supporters of the clause, and it looked as though the group of objectors would again be beaten. But now a curious thing happened. Fitzsimmons remarked that, if he understood the objection made to the clause, "it was a jealousy arising from the power given the Secretary to report plans of revenue to the House." He suggested that "harmony might be restored by changing the word 'report' into 'prepare'." Fitzsimmons was esteemed by the House because of his zealous support of the War of Independence and also because he stood high as a successful Philadelphia merchant, but he did not, however, rank as a leader. Early in the session Ames described him as a man who "is supposed to understand trade, and he assumes some weight in such matters. He is plausible, though not over civil; is artful, has a glaring eye, a down look, speaks low, and with apparent candor and coolness." He was hardly the man to guide the House on a matter pertaining to the organization of public authority.

While the removal issue was before the House, Madison had been prominent in debate, and had spoken with great power and earnestness; but up to this time he had said nothing on the issue now pending. He now remarked that he did not believe that the danger apprehended by some really existed, but twice in his speech he admitted that "there is a small possibility, though it is but small, that an officer may derive a weight from this circumstance, and have some degree of influence upon the deliberations of the legislature." In its practical effect the speech favored the compromise which Fitzsimmons had just proposed; in fact, the only opposition to the change of phrasing now came from a few extremists who still clamored for the omission of the entire clause. The decisive effect of Madison's intervention was a natural consequence of the leadership he had held in the movement for the new Constitution and of his standing as the representative of the new Administration, of his possessing Washington's confidence and acting as his adviser. Washington, then being without a cabinet, had turned to Madison for help in discharging the duties of his office, and at Washington's written request Madison had drafted for him his replies to the addresses of the House and the Senate at the opening of the session. It was a matter of course in such circumstances that the House accepted Fitzsimmons' amendment, — "by a great majority," according to the record, — and thus the Secretary of the Treasury was shut out of the House and was condemned to work in the lobby.

The consequences of this decision have been so vast that it is worth while making an inquiry into motive, although the materials upon which judgment must rest are scant. No one can read the record of this discussion without noting that Madison's approval of the original clause was lukewarm as compared with the ardor he had shown when the question was whether Washington should be allowed to remove his subordinates. This contrast suggests that Madison's behavior was affected by fear of Hamilton's influence. Would it be prudent for him to give Hamilton the advantage of being able to appear in person before the House, and probably to supplant Madison himself as the spokesman of the Administration? Divergence between the two men had already begun in details. At the time the vote on the powers of the Secretary of the Treasury was taken, the tariff bill and the tonnage bill were still pending, and Hamilton's influence operated against Madison's views on some points. Moreover, the question of the permanent residence of the federal government was coming forward and was apparently overshadowing everything else in the minds of members. Ames several times in his correspondence at this period remarks upon Madison's timidity, which was due to his concern about Virginia State politics. Any arrangement that might enable Hamilton to cross swords with an opponent on the floor of the House could not be attractive to Madison, who was a lucid reasoner but not an impressive speaker. Hamilton was both of these, and he possessed an intellectual brilliancy which Madison lacked. Ames, who respected Madison's abilities and who regarded him as the leading member of the House, wrote that "he speaks low, his person is little and ordinary; he speaks decently as to manner, and no more; his language is very pure, perspicuous, and to the point." Why Fitzsimmons should be opposed to the appearance of the Secretary in person in the House, as had been Robert Morris's practice when he was Superintendent of Finance, is plain enough. Maclay's diary has many references to Fitzsimmons's negotiations with members on tariff rates. It was not to the advantage of private diplomacy to allow the Secretary to shape and define issues on the floor of the House. But Fitzsimmons could not have had his way about the matter without Madison's help.

Gibbon remarks that the greatest of theological controversies which racked the Roman Empire and affected the peace of millions turned on the question whether a certain word should be spelled with one diphthong or another. A like disproportion between the vastness of results and the minuteness of verbal distinction is exhibited in this decision by the House. The change of "report" into "prepare" threw up a ridge in the field of constitutional development that has affected the trend of American politics ever since. This is the explanation of a problem of comparative politics that has often excited much wondering notice: why it is that alone among modern representative assemblies the American House of Representatives tends to decline in prestige and authority. The original expectation was that the House of Representatives would take a dominant position like that of the House of Commons, but its degradation began so soon that Fisher Ames noted it as early as 1797. Writing to Hamilton he observed:

"The heads of departments are chief clerks. Instead of being the ministry, the organs of the executive power, and imparting a kind of momentum to the operation of the laws, they are precluded even from communicating with the House by reports. . . . Committees already are the Ministers and while the House indulges a jealousy of encroachment in its functions, which are properly deliberative, it does not perceive that these are impaired and nullified by the monopoly as well as the perversion of information by these committees."

Justice Story, who entered Congress in 1808 as a Jeffersonian Republican, noted the process of degradation, and in his *Commentaries* he pointed out the cause: "The Executive is compelled to resort to secret and unseen influences, to private interviews and private arrangements to accomplish its own appropriate purposes, instead of proposing and sustaining its own duties and measures by a bold and manly appeal to the nation in the face of its representatives."

The last of the organic acts of the session was the one establishing the judiciary. The student will be disappointed if he examines the record to note whether there was any vision of the ascendancy which the judiciary was to obtain in the development of the American constitutional system. The debates were almost wholly about the possibilities of conflict between the state and the federal courts. Although Maclay's diary gives a one-sided and distorted account of the proceedings in the Senate, the course of the debate is clear. Ellsworth of Connecticut had principal charge of the bill. At the outset Lee and Grayson of Virginia made an ineffectual effort to confine the original jurisdiction of the federal courts to cases of admiralty and maritime jurisdiction, and argued that jurisdiction over other cases involving federal law might be conferred upon state courts. This was a point on which there had been some difference of opinion between Hamilton and Madison. The former held that it was within the competency of Congress, when instituting tribunals inferior to the Supreme Court, to adopt the state courts for that purpose. Madison held that nothing less than a system of federal courts quite distinct from the state courts would satisfy the requirements of the Constitution. When the bill was taken up in the House, there was a long debate over this matter. The costly duplication of judicial establishments that has ever since existed in the United States is certainly not necessary to a federal system, but is an American peculiarity. The advocates of a unified system were hampered by the fact that this view was pressed by some in a spirit of hostility to the Constitution. The decisive argument was the untrustworthiness of the state courts. Madison urged this fact with great force and pointed out that in some of the States the courts "are so dependent on the state legislatures, that to make the federal laws dependent on them, would throw us back into all the embarrassments which characterized our former situation." Such was the low repute of the state legislatures that the only way in which this argument could be met was to argue that "Congress shall have power, in its fullest extent, to correct, reverse, or affirm, any decree of a state court." This high assertion of federal authority was made by Jackson of Georgia in the course of a long legal argument. The debate did not follow sectional lines, and in general it was not unfairly described by Maclay as a lawyer's wrangle. The bill was put into shape by the Senate, and reached the House toward the close of the session when the struggle over the site of the national capital was overshadowing everything else. It was so generally believed that nothing important could be gained by attempts at amendment that, after an airing of opinions, the House accepted the measure just as it had come from the Senate.

CHAPTER III

THE MASTER BUILDER

THE subject of national finance had long interested Hamilton. His ideas had been matured by a diligent and minute study of English precedents, and now that his opportunity had come he was ready to grasp it. Soon after he took office, the House resolved that "an adequate provision for the support of the public credit" should be made, and it directed the Secretary of the Treasury "to prepare a plan for that purpose and to report the same to the House at its next meeting." This was, in effect, a postponement until the second session of the First Congress, which began in January, 1790. In his opening address to Congress, Washington pointedly referred to the public credit resolution which he had noted "with peculiar pleasure." On the next day a letter from Hamilton was read in the House stating that he had prepared his plan and was ready to report the same to the House when they should be pleased to receive it.

This announcement brought up anew the question in what manner the Secretary should make his report. Gerry was on his feet at once with a motion that it should be made in writing. Boudinot "hoped that the Secretary of the Treasury might be permitted to make his report in person, in order to answer such inquiries as the members might be disposed to make, for it was a justifiable surmise that gentlemen would not be able clearly to comprehend so intricate a subject without oral illustration." The allusion to the intricacy of the subject had the effect of turning against the plan of oral communication some who had favored giving the Secretary the same direct access to Congress that the Superintendent of Finance had formerly enjoyed. Ames, for instance, now desired that the Secretary's communications should be in writing since "in this shape they would obtain a degree of permanency favorable to the responsibility of the officer, while, at the same time, they would be less liable to be misunderstood." Benson suggested that since the resolution of Congress had directed the Secretary to make a report, it was left to his discretion to "make it in the manner for which he is prepared." Gerry adroitly countered by saying that the resolution provided for a report. That done, it would be time enough "to give him the right to lay before them his explanations, if he thinks explanations necessary." The debate was brief and one-sided; the motion for receiving the report in writing was adopted without a division. Five days later the written report was laid before the House, but the Secretary was never accorded an opportunity to offer any personal explanations.

This masterly report, which is justly regarded as the corner-stone of American public credit, excites the admiration of the reader by the clearness of its analysis, the cogency of its argument, and the broad range of its vision. The principles of action that it embodied, however, were few and simple, chief among them being exact and punctual fulfillment of contract. "States, like individuals, who observe their engagements, are respected and trusted; while the reverse is the fate of those who pursue an opposite conduct." To discharge the principal of the public debt was of course impracticable; nor was it desirable, as the creditors would be well pleased to leave it at interest. Incidentally the funding of the debt would provide securities that would serve trade as a species of currency, and would set in motion a long train of benefits that would extend throughout the community. In the funding operation the debts contracted by the States should be included. As to this Hamilton remarked: "The general principle of it seems to be equitable, for it seems difficult to conceive a good reason why the expenses for the particular defense of a part in a common war should not be a common charge, as well as those incurred professedly for the general defense. The defense of each part is that of the whole; and unless the expenditures are brought into a common mass, the tendency must be to add to the calamities suffered by being the most exposed to the ravages of war and increase of burthens."

Hamilton computed the amount of the foreign debt, principal and arrears, at $11,710,378.62; the domestic debt, including that of the States, at $42,414,085.94, — a total of over fifty-four millions with an annual interest charge at existing rates amounting to $4,587,444.81, — a staggering total for a nation whose revenue was then insufficient to meet its current expenses. Nevertheless Hamilton refused to admit that "such a provision would exceed the abilities of the country," but he was "clearly of the opinion that to make it would require the extension of taxation to a degree and to objects which the true interest of the public creditor forbids." He therefore favored a composition, in arranging which there would be strict adherence to the principle "that no change in the rights of creditors ought to be attempted without their voluntary consent; and that this consent ought to be voluntary in fact as well as in name." It followed that "every proposal of a change ought to be in the shape of an appeal to their interests; but not to their necessities." Hamilton then went into details of a funding loan, in which various options were offered to the creditors, including land grants in part payment, and conversion in whole or in part into annuities, several sorts of which were offered. He submitted estimates of how the various plans would work out in practice, and he concluded that the annual revenue which would be required to enable the government to meet its obligations under the scheme and also to maintain its current service would amount to $2,239,163.09, a sum that could be readily provided.

There could not have been a more striking contrast than there was between the humiliating conditions which actually existed and the grand results which Hamilton designed and confidently expected. The ardent and hopeful tone of his plan, conceived in apparently desperate circumstances, is very marked. He declared: "It cannot but merit particular attention that among ourselves the most enlightened friends of good government are those whose expectations are the highest. To justify and preserve their confidence; to promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources both to agriculture and commerce; to cement more closely the union of the States; to add to their security against foreign attack; to establish public order on the basis of a liberal and upright policy — these are the great and invaluable ends to be secured by a proper and adequate provision at the present period for the support of public credit."

All these great objects were indeed attained, but Hamilton's anticipation of them was at the time regarded as either a pretext made to cajole Congress or else merely an ebullition from his own sanguine nature not to be taken too seriously by sensible people. Senator Maclay of Pennsylvania regarded Hamilton's plans as wildly extravagant in their conception and iniquitous in their practical effect. In his opinion, Hamilton had "a very boyish, giddy manner, and Scotch-Irish people could well call him a 'skite.'" Jackson of Georgia exposed to the House the folly of Hamilton's proposals by pointing out that a funded debt meant national decay. He mentioned England as "a melancholy instance of the ruin attending such engagements." To such a pitch had the "spirit of funding and borrowing been carried in that country" that its national debt was now "a burthen which the most sanguine mind can never contemplate they will ever be relieved from." France also was "considerably enfeebled and languishes under a heavy load of debt." He argued that by funding the debt in America "the same effect must be produced that has taken place in other nations; it must either bring on national bankruptcy, or annihilate her existence as an independent empire."

Such dismal prognostications on the very eve of the Napoleonic era, with its tremendous revelations of national power, were quite common at that time.

The long rambling debate that took place in the House when Hamilton's report was taken up for consideration abounds with similar instances of shortsightedness. Many members did not scruple to advise repudiation, in whole or in part. Livermore of New Hampshire admitted that the foreign debt should be provided for, since it was "lent to the United States in real coin, by disinterested persons, not concerned or benefited by the revolution," but that the domestic debt was "for depreciated paper, or services done at exorbitant rates, or for goods or provisions supplied at more than their real worth, by those who received all the benefits arising from our change of condition." True, Congress had pledged its faith to the redemption of issues at their face value, "but this was done on a principle of policy, in order to prevent the rapid depreciation which was taking place." He argued that "money lent in this depreciated and depreciating state can hardly be said to be lent from a spirit of patriotism; it was a mere speculation in public securities."

The distinction between the foreign debt and the domestic was seized by many members as providing a just basis for discrimination. Page of Virginia observed that "our citizens were deeply interested, and, I believe, if they were never to get a farthing for what is owing to them for their services, they would be well paid; they have gained what they aimed at; they have secured their liberties and their laws; they will be satisfied that this House has pledged itself to pay foreigners the generous loans they advanced to us in the day of distress." In the course of the debate the power to do was so often mentioned as implying the right to do that Ames was moved to remark: "I have heard that in the East Indies the stock of the labor and the property of the empire is the property of the Prince; that it is held at his will and pleasure; but this is a slavish doctrine, which I hope we are not prepared to adopt here." As a matter of fact, there had already been extensive scaling of the debt, and the note emissions had been pretty nearly wiped out. To save the public credit from complete collapse, the Continental Congress had entered into definite contracts under the most solemn pledges, and it was upon this select class of securities that it was now proposed to start anew the process of repudiation. But public opinion displayed itself so hostile to such perfidy that the party of repudiation in Congress soon dwindled to insignificance and the struggle finally settled upon two issues, discrimination and assumption.

Weeks of debate ensued, and the deepest impression made by a careful perusal of the record is the inability of members to appreciate the importance of the issues. Much of the tedious and pointless character of their speeches may be ascribed to the lack of the personal presence of the Secretary. There being nothing to focus the debate and exclude the fictitious and irrelevant, it rambled in any direction a speaker's fancy might suggest. Moreover, its quality was impaired because any consideration of motive was of the nature of talking about a man behind his back and this, everyone knows, is very different from saying things to his face. Assertions and innuendos which would hardly have been hazarded had Hamilton been present, or which, had they been made, would have been forthwith met and refuted, were indulged in without restraint. Although one of the reasons given for requiring a written report was that the House would be the better informed, the debate does not indicate that the arguments by which Hamilton had vindicated his proposals had really been apprehended.

The question whether or not any discrimination could be made between original holders of the public securities and those who had acquired them by purchase was considered at length by Hamilton in his report. The public securities had been at such a heavy discount that now, if they were to be met at face value, speculators would reap large profits. Hamilton put the case of the opposition as strongly as possible. It might be urged that it was unreasonable "to pay twenty shillings in the pound to one who had not given more for it than three or four; and it is added that it would be hard to aggravate the misfortune of the first owner, who, probably through necessity, parted with his property at so great a loss, by obliging him to contribute to the profit of the person who had speculated on his distresses." Nevertheless, Hamilton submitted considerations showing that discrimination would be "equally unjust and impolitic, as highly injurious even to the original holders of public securities, as ruinous to public credit." It is unnecessary to repeat the lucid argument by which Hamilton demonstrated the soundness of his position, for security of transfer is now well understood to be an essential element of public credit; but the special point of interest is that the debate simply ignored Hamilton's argument and rambled along over the superficial aspects of the case, dwelling upon the sorrows of those who had parted with their holdings, and exhibiting their situation as the most important matter to be considered.

Madison was most active in making that branch of the case the leading issue, and in a series of elaborate speeches which cannot now be read without regret, he urged that the present holders should be allowed only the highest market price previously recorded, and that the residue should go to the original holders. Boudinot at once pointed out that there was nothing on record to show who might be an original bona fide holder. Great quantities of the certificates of indebtedness had, as a mere matter of convenience, been issued to government clerks who afterwards distributed them among those who furnished supplies to the government or who performed services entitling them to pay. He mentioned that he himself appeared on the record as original holder in cases wherein he had really acted in behalf of his neighbors to relieve them of the trouble of personal appearance. Madison's proposition would therefore invest him with a legal title to property which really belonged to others. But this and other evidence of the real effect of Madison's proposal failed to move him, further than to cause him to declare that "all that he wished was that the claims of the original holders, not less than those of the actual holders, should be fairly examined and justly decided." Finally Benson of New York gave him a shrewd home thrust that plainly embarrassed him. He put the question whether, if he had purchased a certificate from Madison, and the Treasury withheld part of the amount for Madison as the original holder, Madison would keep the money? "I ask," said Benson, "whether he would take advantage of the law against me, and refuse to give me authority to take it up in his name?" Madison evaded the query by saying that everything would depend upon the circumstances of any particular case, and that circumstances were conceivable in which the most tender conscience need not refrain from taking the benefit of what the government had determined.

The debate on Madison's discrimination amendment lasted from the eleventh to the twenty-second day of February — Washington's birthday. The House did honor to the day when it rejected Madison's motion by the crushing vote of 36 to 13. With that, his pretensions to the leadership of the House quite disappeared.

The assumption of state debts was the subject of a debate in committee of the whole which lasted from the twenty-third of February to the second of March. New factional lines now revealed a supposed diversity of interest of the several States. The false notions of finance then current were illustrated by an argument that was in continual use, either on the floor or in the lobby. Members would figure how much their States would have to pay as their share of the debt that would be assumed, and on that basis would reach conclusions as to how their States stood to win or lose by the transaction. By this reckoning, of course, the great gainer would appear to be the State upon whom the chances of war had piled the largest debt. This calculation made Burke of South Carolina, usually an opponent of anything coming from Hamilton, a strong advocate of assumption. He told the House that "if the present question was lost, he was almost certain it would end in her bankruptcy, for she [South Carolina] was no more able to grapple with her enormous debt than a boy of twelve years of age is able to grapple with a giant." Livermore, representing a State never within the actual field of military operations, at once replied: "I conceive that the debt of South Carolina, or Massachusetts, or of an individual, has nothing to do with our deliberations. If they have involved themselves in debt, it is their misfortune, and they must extricate themselves as well as they can." On a later occasion Stone of Maryland, another State that lay outside the track of war, gave the leading war-debt States an admonition of the kind that adds insult to injury, saying "however inconvenient it may be to Massachusetts or South Carolina to make a bold exertion, and nobly bear the burthens of their present debt, I believe in the end it would be found to conduce greatly to their advantage." Burke made a crushing rejoinder. "Was Maryland like South Carolina constantly grappling with the enemy during the whole war? There is not a road in the State but has witnessed the ravages of war; plantations were destroyed, and the skeletons of houses, to this day, point out to the traveler the route of the British army; her citizens were exposed to every violence, their capital taken, and their country almost overrun by the enemy; men, women, and children murdered by the Indians and Tories; all the personal property consumed, and now is it to be wondered at that she is not able to make exertions equal with other States, who have been generally in an undisturbed condition?"

The argument pressed by the advocates of assumption was that the state debts contracted during the Revolutionary War were for the common defense, and that, unless these were assumed by the general government, the adoption of the new Constitution would do injury by withdrawing revenue resources which the States had formerly possessed. This position at the present day seems reasonable enough, but it is certain that at that time people worked themselves into a genuine rage over the matter and were able to persuade themselves into a sincere belief that it was outrageous the unfortunate States should expect the others to bear their troubles, and that Hamilton was a great rogue for proposing such a scheme. Writing in his private diary, Maclay characterized the plan as "a monument of political absurdity," and he was in the habit of referring to Hamilton's supporters as his "gladiators" and as a "corrupt squadron."

On the whole the records make painful reading. The prevailing tone of public life was one of dull and narrow provincialism, at times thickening into stupidity, at times sharpening into spite, although ordinarily made respectable by a serious attitude to life and by a stolid fortitude in facing whatever the distracted times might present. It was the influence of a few great men that made America a nation. If one is not subject to the spirit of ancestor worship that has long ruled American history, one is bound to say that — apart from some forceful pamphleteering of transient purpose—the voluminous political literature of the formative period displays much pedantic erudition but has little that goes really deep. The *Federalist*, the artillery of a hard fought battle, is a striking exception. So, too, is the series of reports by Hamilton. But his plans could not prevail by force of reason against the general spirit of selfish particularism. Although on March 2 a motion adverse to assumption in committee of the whole was defeated by a vote of 28 to 22, it was then known that a majority could not be procured for enactment, and on April 12 the assumption bill was defeated outright in the House, 31 to 29. Maclay, who went over to the House from the Senate to witness the event, gloated over the defeat in his diary:

"Sedgwick, from Boston, pronounced a funeral oration over it. He was called to order; some confusion ensued; he took his hat and went out. When he returned, his visage bore the visible marks of weeping. Fitzsimmons reddened like scarlet; his eyes were brimful. Clymer's color, always pale, now merged to a deadly white; his lips quivered, and his nether jaw shook with convulsive motions; his head, neck, and breast contracted with gesticulations resembling those of a turkey or goose nearly strangled in the act of deglutition. Benson bungled like a shoemaker who has lost his end. . . . Wadsworth hid his grief under the rim of a round hat. Boudinot's wrinkles rose in ridges and the angles of his mouth were depressed and assumed a curve resembling a horse's shoe."

The defeat did not discourage Hamilton. He had successfully handled a more difficult situation in getting New York to ratify the Constitution, and, resorting now to the same means he had then employed, he used pressure of interest to move those who could not be stirred by reason. The intense concern felt by members in the choice of the site of the national capital supplied him with the leverage which he brought to bear on the situation. Most of the members were more stirred by that question than by any other before

Congress. It was a prominent topic in Madison's correspondence from the time the Constitution was adopted. Maclay's diary abounds with references to the subject. Some of his bitterest sentences are penned about the conduct of those who preferred some other site to that on the Susquehanna River which he knew to be the best because he lived there himself. Bargaining among the members as to the selection had been going on almost from the first. As early as April 26, 1789, before Washington had been installed in his office, Maclay mentions a meeting "to concert some measures for the removal of Congress." Thereafter notices of pending deals appear frequently in his diary. After the defeat of the assumption bill, the diary notes the activity of Hamilton in this matter. An entry of June 14, 1790, ascribes to Robert Morris the statement that "Hamilton said he wanted one vote in the Senate and five in the House of Representatives; that he was willing and would agree to place the permanent residence of Congress at Germantown or Falls of the Delaware (Trenton), if he would procure him those votes." Although definite knowledge is unattainable, one gets the impression, in following the devious course of these intrigues, that had

Pennsylvania interests been united they could have decided the site of the national capital; but the delegation was divided over the relative merits of the Delaware and the Susquehanna as well as on the question of assumption. Hamilton's efforts in this quarter were ineffectual, and the winning combination was finally arranged elsewhere and otherwise by the aid of Jefferson.

Thomas Jefferson was at this time forty-seven years old, and owing both to seniority and to the distinguished positions he had held, he ranked as the most illustrious member of the Administration. His correspondence at this period shows that he was fully aware of the importance of the crisis, and he did not overrate it when he wrote to James Monroe, June 20, 1790, that, unless the measures of the Administration were successful, "our credit will burst and vanish, and the States separate to take care everyone of itself." In this letter Jefferson outlined the compromise that was actually adopted by Congress. The strongest opposition to the assumption bill had come from Virginia, although Maryland, Georgia, and New Hampshire also opposed it, and the Middle States were divided. Jefferson was able to get enough Southern votes to carry assumption in return for enough votes from Hamilton's adherents to carry the Potomac site. An agreement was reached at a dinner given by Jefferson to which he invited Hamilton and Madison. According to this arrangement, the capital was to remain in Philadelphia for ten years and after that to be on the Potomac River in a district ten miles square to be selected by the President. The residence act was approved July 16, 1790; the funding and assumption measures, now combined in one bill, became law on August 4.

After Jefferson turned against the Administration, his participation in the passage of the assumption bill was such an awkward circumstance that he discredited his own intelligence by professing that he "was most ignorantly and innocently made to hold the candle" to Hamilton's "game." In reality the public service Jefferson then performed was the most useful in all his long and fruitful career. But for this action, the Declaration of Independence, to the drafting of which he owes his greatest fame, might now be figuring among the historical documents of lost causes, like similar elaborate statements of principle made during the Commonwealth period in England. Had the national forces failed at the critical period of financial organization, and the States, bankrupt by the revolutionary struggle, been left in the lurch, the republic would have followed the usual course of disintegration displayed by federations from the time of the Greek amphictyonies down to that of the Holy Roman Empire.

The charge was made soon after Hamilton's victory that it was largely due to the influence of speculators. The advance in the market value of securities produced by Hamilton's measures certainly gave an opportunity to speculators of which they availed themselves with the unscrupulous activity characteristic of the sordid tribe. Jefferson has left an account of "the base scramble." "Couriers and relay horses by land, and swift sailing pilot boats by sea, were flying in all directions. Active partners and agents were associated and employed in every state, town, and country neighborhood, and this paper was bought up at five shillings, and even as low as two shillings in the pound, before the holder knew that Congress had already provided for its assumption at par. Immense sums were thus filched from the poor and ignorant, and fortunes accumulated by those who had themselves been poor enough before."

This account is highly colored. The struggle was too close, and the issue was long too doubtful, to admit of speculative preparations extending to every "town and country neighborhood." If speculation took place on such a large scale, it must have been also taking risks on a large scale, for assumption was not assured until Jefferson himself put his shoulder to the wheel. The lack of means for prompt diffusion of intelligence naturally provided large opportunity for speculation by those in a position to keep well-informed, and undoubtedly large profits were made; but the circumstances were such that it seems most probable that profits were less than market opportunities would have allowed had not the issue been so long in doubt. Nevertheless there was much speculative activity, and the charge was soon made that it extended into Congress.[1]

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[1] This charge was put forth by John Taylor in pamphlets printed in 1793 and 1794, in which he reviewed the financial policy of the Administration and gave a list of Congressmen who had invested in the public funds. The facts on which this charge rests have been collected and examined by Professor Beard in his *Economic Origins of Jeffersonian Democracy*. His analysis shows that out of sixty-four members of the House, twenty-nine were security holders, and of these twenty-one voted for and eight voted against assumption. But the facts disclosed do not sustain his theory that the issue was essentially a conflict between capitalism and agrarianism. The assumption bill was lifted to its place on the statute book through the leverage exerted by Hamilton and Jefferson, with Washington's prestige as their fulcrum. The characters of these three men resist schemes of classification

The passage of assumption was the turning point. Other important measures followed, but none of them met with difficulties which the Administration could not overcome by ordinary methods of persuasion and appeal. A national bank was authorized by an act approved on February 25, 1791. Hamilton's famous report on manufactures, a masterly analysis of the sources of national wealth and of the means of improving them, was sent to Congress on December 5, 1791. Upon his recommendation Congress established the mint, the only point which excited controversy being Hamilton's proposal that the coins should be stamped with the head of the President in whose administration they were issued. This suggestion was rejected on the ground that it smacked too much of the practice of monarchies. The queer totemistic designs of American coinage are a consequence of this decision.

The formation of national government by voluntary agreement is a unique event. The

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according to economic interest. The principal value of analysis of the economic elements of the struggle is to protect from undervaluation the motives that actuated the opposition to Hamilton's measures. The historian has the advantage of a perspective denied to participants in events, and this fact is apt to turn unduly to the discredit of lost causes.

explanation of this peculiar result in the case of America is the unifying influence of Hamilton's measures. They interested in the support of the government economic forces strong enough to counteract the separatist tendencies that had always before broken up states unless they were held together by sheer might of power in their rulers. The means employed have been cited as evidence in support of the economic interpretation of history now in fashion. Government, it is true, like every other form of life, must meet the fundamental needs of subsistence and defense, but this truism supplies no explanation of the particular mode of doing so that may be adopted. Those needs account for motion but not for direction. Human will, discernment, and purpose enter and complicate the situation in a way that makes theories of determinism appear absurd. No one has ever contended that Hamilton was prompted by an economic motive in giving up his law practice to accept public office. He did so against the remonstrances of his friends, whose predictions that what he would get out of it for himself would be calumny, persecution, and loss of fortune, were all fully verified; but he possessed a nature which found its happiness in bringing high ideals to grand fulfillment, and in applying his powers to that object he let everything else go. Hamilton's career is one of the greatest of those facts that baffle attempts to reduce history to an exhibition of the play of economic forces.

CHAPTER IV

ALARUMS AND EXCURSIONS

THE Shakespearian stage direction which heads this chapter appropriately describes the course of administrative experience while Washington was trying to get from Congress the means of sustaining the responsibilities with which he was charged by his office. Events did not stand still because for a time anything like national government had ceased. Before Washington left Mount Vernon he had been disquieted by reports of Indian troubles in the West, and of intrigues by Great Britain — which still retained posts that according to the treaty of peace belonged to the United States, — and by Spain which held the lower Mississippi. Washington applied himself to these matters as soon as he was well in office, but he was much hindered in his arrangements by apathy or indifference in Congress. He noted in his diary for May 1, 1790, communications made to him of a disposition among members of Congress "to pay little attention to the Western country because they were of the opinion it would soon shake off its dependence on this, and in the meantime would be burdensome to it." From a letter of Gen. Rufus Putnam, one of the organizers of the Ohio company, it appears that in July, 1789, Ames of Massachusetts put these queries to him: "Can we retain the western country with the government of the United States? And if we can, what use will it be to them?" Putnam wrote a labored article to the effect that it was both feasible and desirable to hold the West, but the character of his arguments shows that there was then a poor prospect of success. At that time no one could have anticipated the Napoleonic wars which ended all European competition for the possession of the Mississippi valley, and, as it were, tossed that region into the hands of the United States. There was strong opposition in Congress to pursuing any course that would require maintenance of an army or navy. Some held that it was a great mistake to have a war department, and that there would be time enough to create one in case war should actually arrive.

In a message to the Senate, August 7, 1789, Washington had urged the importance of "some uniform and effective system for the militia of the United States," saying that he was "particularly anxious" it should receive early attention. On January 18, 1790, General Knox submitted to Congress a plan to which there are frequent references in Washington's diary, showing the special interest he took in the subject. The report laid down principles which have long since been embraced by European nations, but which have just recently been recognized by the United States. It asserts: "That it is the indispensable duty of every nation to establish all necessary institutions for its protection and defense; that it is a capital security to a free state for the great body of the people to possess a competent knowledge of the military art; that every man of the proper age and ability of body is firmly bound by the social compact to perform, personally, his proportion of military duty for the defense of the State; that all men of the legal military age should be armed, enrolled, and held responsible for different degrees of military service." In furtherance of these principles a scheme was submitted providing for military service by the citizens of the United States beginning at eighteen years of age and terminating at sixty.

The response of Congress was the Act of April 30, 1790, authorizing a military establishment "to the number of one thousand two hundred and sixteen non-commissioned officers, privates, and musicians," with permission to the President to call State Militia into service if need be, "in protecting the inhabitants of the frontiers." Washington, in noting in his diary his approval of the act, observed that it was not "adequate to the exigencies of the government and the protection it is intended to afford."

The Indian troubles in the Southwest were made particularly serious by the ability of the head-chief of the Creek nation, Alexander McGillivray, the authentic facts of whose career might seem too wildly improbable even for the uses of melodrama. His grandmother was a full-blooded Creek of high standing in the nation. She had a daughter by Captain Marchand, a French officer. This daughter, who is described as a bewitching beauty, was taken to wife by Lachland McGillivray, a Scotchman engaged in the Indian trade. A son was born who, at the age of ten, was sent by his father to Charleston to be educated, where he remained nearly seven years receiving instruction both in English and Latin. This son, Alexander, was intended by his father for civilized life, and when he was seventeen he was placed with a business house in Savannah. During the Revolutionary War the father took the Tory side and his property was confiscated. The son took refuge with his Indian kinsfolk, and acquired in their councils an ascendancy which also extended to the Seminole tribe. His position and influence made his favor an important object with all powers having American interests. During the war the British conferred upon him the rank and pay of a colonel. In 1784, as the representative of the Creek and Seminole nations, he formed a treaty of alliance with Spain, by the terms of which he became a Spanish commissary with the rank and pay of a colonel.

Against the State of Georgia, the Creek nation had grievances which McGillivray was able to voice with a vigor and an eloquence that compelled attention. It was the old story, so often repeated in American history, of encroachments upon Indian territory. Attempts at negotiation had been made by the old government, and these were now renewed by Washington with no better result. McGillivray met the commissioners, but left on finding that they had no intention of restoring the

Indian lands that had been taken. A formidable Indian war seemed imminent, but Washington, whose own frontier experience made him well versed in Indian affairs, judged correctly that the way to handle the situation was to induce McGillivray to come to New York, though, as he noted in his diary, the matter must be so managed that the "government might not appear to be an agent in it, or suffer in its dignity if the attempt to get him here should not succeed." With his habitual caution, Washington considered the point whether he could send out an agent without consulting the Senate on the appointment, and he instructed General Knox "to take the opinion of the Chief Justice of the United States and the Secretary of the Treasury." The assurances obtained were such that Washington selected an experienced frontier commander, Colonel Marinus Willett of New York, and impressed upon him the importance of bringing the Indian chiefs to New York, pointing out "the arguments justifiable for him to use to effect this, with such lures as respected McGillivray personally, and might be held out to them."

Colonel Willett was altogether successful, though the inducements he offered were probably aided by McGillivray's desire to visit New York and meet General Washington. Other chiefs accompanied him, and on their way they received many official attentions. An incident which occurred at Guilford Court House, South Carolina, displays McGillivray's character in a kindly light. A woman whose husband had been killed by Creek Indians and who with her children had been made captive, visited McGillivray to thank him for effecting their release, and it was disclosed that he had since that time been contributing to the support of the family. At New York, the recently organized Tammany Society turned out in costumes supposed to represent Indian attire and escorted the visiting chiefs to Federal Hall. Eventually Washington himself went to Federal Hall in his coach of state and in all the trappings of official dignity, to sign the treaty concluded with the Indians. The treaty, which laid down the pattern subsequently followed by the government in its dealings with the Indians, recognized the claims of the Creek nation to part of the territory it claimed, and gave compensation for the part it relinquished by an annuity of fifteen hundred dollars for the tribe, and an annuity of one hundred dollars for each of the principal chiefs.

For his part in the transaction McGillivray was commissioned an agent of the United States with the rank of brigadier-general, a position which he sustained with dignity. He was six feet tall, spare in frame, erect in carriage. His eyes were large, dark, and piercing; his forehead, wider at the top than just above the eyes, was so high and broad as to be almost bulging. When he was a British colonel, he wore the uniform of that rank; when in the Spanish service, he wore the military dress of that country; and after Washington appointed him a brigadier-general he sometimes wore the uniform of the American army, but never in the presence of Spaniards. In different parts of his dominions he had good houses where he practised generous hospitality. His influence was shaken by his various political alliances, and before he died in 1793 he had lost much of his authority.

In the course of these negotiations Washington had an experience with the Senate which thereafter affected his official behavior. The debates of the constitutional convention indicated an expectation that the Senate would act as a privy council to the President; and Washington — intent above all things on doing his duty — tried to treat it as such. In company with General

Knox he went to the Senate chamber, prepared to explain his negotiations with the Indian chiefs, but he forthwith experienced the truth of the proverb that although you may lead a horse to water you cannot make him drink. In his diary for August 22, 1789, Maclay gave a characteristic account of the scene. Washington presided, taking the Vice-President's chair. "He rose and told us bluntly that he had called on us for our advice and consent to some propositions respecting the treaty to be held with the Southern Indians. Said he had brought General Knox with him who was well acquainted with the business." A statement was read giving a schedule of the propositions on which the advice of the Senate was asked. Maclay relates that he called for the reading of the treaties and other documents referred to in the statement. "I cast an eye at the President of the United States. I saw he wore an aspect of stern displeasure." There was a manifest reluctance of the Senate to proceed with the matter in the President's presence, and finally a motion was made to refer the business to a committee of five. A sharp debate followed in which "the President of the United States started up in a violent fret. 'This defeats every purpose of my coming here' were the first words that he said. He then went on to say that he had brought his Secretary of War with him to give any necessary information; that the Secretary knew all about the business, and yet he was delayed and could not go on with the matter." The situation evidently became strained. Maclay relates: "A pause for some time ensued. We waited for him to withdraw. He did so with a discontented air."

The privy council function of the Senate was thus in effect abolished by its own action. Thereafter the President had practically no choice save to conclude matters subject to subsequent ratification by the Senate. It soon became the practice of the Senate to restrict the President's power of appointment by conditioning it upon the approval of the Senators from the State in which an appointment was made. The clause providing for the advice and consent of the Senate was among the changes made in the original draft to conciliate the small States, but it was not supposed that the practical effect would be to allow Senators to dictate appointments. It was observed in the *Federalist* that "there will be no exertion of choice on the part of Senators." Nevertheless there was some uneasiness on the point. In a letter of May

31, 1789, Ames remarked that "the meddling of the Senate in appointments is one of the least defensible parts of the Constitution," and with prophetic insight he foretold that "the number of the Senators, the secrecy of their doings, would shelter them, and a corrupt connection between those who appoint to office and the officers themselves would be created."

Washington had to submit to senatorial dictation almost at the outset of his administration, the Senate refusing to confirm his nomination of Benjamin Fishbourn for the place of naval officer at Savannah. The only details to be had about this affair are those given in a special message of August 6, 1789, from which it appears that Washington was not notified of the grounds of the Senate's objection. He defended his selection on the ground that Fishbourn had a meritorious record as an army officer, had held distinguished positions in the state government of Georgia which testified public confidence, and moreover was actually holding, by virtue of state appointment, an office similar to that to which Washington desired to appoint him. The appointment was, in fact, no more than the transfer to the federal service of an official of approved administrative experience, and was of such manifest propriety that it seems most likely that the rejection was due to local political intrigue using the Georgia Senators as its tool. The office went to Lachlan McIntosh, who was a prominent Georgia politician. Over ten years before he had killed in a duel Button Gwinnett, a signer of the Declaration of Independence. Gwinnett was the challenger and McIntosh was badly wounded in the duel, but the affair caused a feud that long disturbed Georgia politics, and through the agency of the Senate it was able to reach and annoy the President of the United States.

At the time when Washington was inaugurated both North Carolina and Rhode Island were outside the Union. The national government was a new and doubtful enterprise, remote from and unfamiliar to the mass of the people. To turn their thoughts toward the new Administration it seemed to be good policy for Washington to make tours. The notes made by Washington in his diary indicate that the project was his own notion, but both Hamilton and Knox cordially approved it and Madison "saw no impropriety" in it. Therefore, shortly after the recess of the first session of Congress, Washington started on a trip through the Northern States, pointedly avoiding Rhode Island, then a foreign country. It was during this tour that a question of etiquette occurred about which there was a great stir at the time. John Hancock, then Governor of Massachusetts, did not call upon Washington but wrote inviting Washington to stay at his house, and when this invitation was declined, he wrote again inviting the President to dinner *en famille.* Washington again declined, and this time the failure of the Governor to pay his respects to the President of the United States was the talk of the town. Some of Hancock's aides now called with excuses on the score of his illness. Washington noted in his diary, "I informed them in explicit terms that I should not see the Governor unless it was at my own lodgings." This incident occurred on Saturday evening, and the effect was such that Governor Hancock called in person on Sunday. The affair was the subject of much comment not to Governor Hancock's advantage. Washington's church-going habits on this trip afford no small evidence of the patient consideration which he paid to every point of duty. In New York, he attended Episcopal church service regularly once every Sunday. On his northern tour he went to the Episcopal church in the morning, and then showed his respect for the dominant religious system of New England by attending the Congregational church in the afternoon. His northern tour lasted from October 15 to November 13, 1789, and was attended by popular manifestations that must have promoted the spread of national sentiment. On November 21, 1789, North Carolina came into the Union, and Rhode Island followed on May 29, 1790. Washington started on a tour of the Southern States on March 21, 1791, in which he covered more than seventeen hundred miles in sixty-six days, and was received with grand demonstrations at all the towns he visited.

While he was making these tours, which in the days before the railroad and the telegraph were practically the only efficacious means of establishing the new government in the thoughts and feelings of the people, he was much concerned about frontier troubles, and with good reason, as he well knew the deficiency of the means that Congress had allowed. The tiny army of the United States was under the command of Lieutenant-Colonel Josiah Harmar, with the brevet rank of general. In October, 1790, Harmar led his troops, nearly four-fifths of which were new levies of militia, against the Indians who had been disturbing the western frontier. The expedition was a succession of blunders and failures which were due more to the rude and undisciplined character of the material that Harmar had to work with than to his personal incapacity. Harmar did succeed in destroying five Indian villages with their stores of corn, but their inhabitants had warning enough to escape and were able to take prompt vengeance. A detachment of troops was ambushed and badly cut up. The design had been to push on to the upper course of the Wabash, but so many horses had been stolen by the Indians that the expedition was crippled. As a result, Harmar marched his troops back again, professing to believe that punishment had been inflicted upon the Indians that would be a severe lesson to them. What really happened was that the Indians were encouraged to think that they were more than a match for any army which the settlers could send against them, and before long news came of the destruction of settlements and the massacre of their inhabitants. "Unless," wrote Rufus Putnam to Washington, "Government speedily sends a body of troops for our protection, we are a ruined people."

Washington did what he could. He sent to Congress Putnam's letter and other frontier communications, but Congress, which was stubbornly opposed to creating a national army, replied, when the need was demonstrated, that the militia of the several States were available. The Government was without means of protecting the Indians against abuse and injustice or of protecting the settlers against the savage retaliations that naturally followed. The dilemma was stated with sharp distinctness in correspondence which passed between Washington and Hamilton in April, 1791. Washington wrote that it was a hopeless undertaking to keep peace on the frontier "whilst land-jobbing and the disorderly conduct of our borderers are suffered with impunity; and while the States individually are omitting no occasion to intermeddle in matters which belong to the general Government." Hamilton in reply went to the root of the matter. "Our system is such as still to leave the public peace of the Union at the mercy of each state government." He proceeded to give a concrete instance: "For example, a party comes from a county of Virginia into Pennsylvania, and wantonly murders some friendly Indians. The national Government, instead of having power to apprehend the murderers and bring them to justice, is obliged to make a representation to that of Pennsylvania; that of Pennsylvania, again, is to make a requisition of that of Virginia. And whether the murderers shall be brought to justice at all must depend upon the particular policy, and energy, and good disposition of two state governments, and the efficacy of the provisions of their respective laws. And security of other States and the money of all are at the discretion of one. These things require a remedy; but when that will come, God knows."

Toward the close of its last session, the First Congress was induced to pass an act "for raising and adding another regiment to the military establishment of the United States and for making further provision for the protection of the frontiers." The further provision authorized the President to employ "troops enlisted under the denomination of levies" for a term not exceeding six months and in number not exceeding two thousand. The law thus made it compulsory that the troops should move while still raw and untrained. Congress had fixed the pay of the privates at three dollars a month, from which ninety cents were deducted, and it had been necessary to scrape the streets and even the prisons of the seaboard cities for men willing to enlist upon such terms. Washington gave the command to General Arthur St. Clair, whose military experience should have made him a capable commander, but he was then in bad health and unable to handle the situation under the conditions imposed upon him. General Harmar, enlightened by his own experience, predicted that such an army would certainly be defeated.

The campaign was intended as an expedition to chastise the Indians so that they would be deterred from molesting the settlers, but it resulted in a disaster that greatly encouraged Indian depredations. As the army approached the Indian towns, a body of the militia deserted, and it was reported to St. Clair that they intended to plunder the supplies. He sent one of his regular regiments after them, thus reducing his available force to about fourteen hundred men. On November 3, 1791, this force camped on the eastern fork of Wabash. Before daybreak the next morning the Indians made a sudden attack, taking the troops by surprise and throwing them into disorder. It was the story of Braddock's defeat over again. The troops were surrounded by foes that they could not see and could not reach. Indian marksmen picked off the gunners until the artillery was silenced; then the Indians rushed in and seized the guns. In the combat there were both conspicuous exploits of valor and disgraceful scenes of cowardice. In that dark hour St. Clair showed undaunted courage. He was in the front of the fight, and several times he headed charges. He seemed to have a charmed life, for although eight bullets pierced his clothes, one cutting away a lock of the thick gray hair that flowed from under his three-cornered hat, he escaped without a wound. Finally defeat became a rout which St. Clair was powerless to check. Pushed aside in the rush of fugitives, he was left in a position of great peril. If the Indian pursuit had been persistent, few might have escaped, but the Indians stopped to plunder the camp. Nevertheless six hundred and thirty men were killed and over two hundred and eighty wounded, with small loss to the Indians.

Washington's reception of the news illustrates both his iron composure and the gusts of passion under which it sometimes gave way. The details are unquestionably authentic, as they were communicated by Washington's secretary who witnessed the scene. Washington was having a dinner party when an officer arrived at the door and sent word that he was the bearer of dispatches from the Western army. The secretary went out to him, but the officer said his instructions were to deliver the dispatches to the President in person. Washington then went to the officer and received the terrible news. He returned to the table as though nothing had happened, and everything went on as usual. After dinner there was a reception in Mrs. Washington's drawing-room and the President, as was his custom, spoke courteously to every lady in the room. By ten o'clock all the visitors had gone and Washington began to pace the floor at first without any change of manner, but soon he began to show emotional excitement and he broke out suddenly: "It's all over! St. Clair is defeated — routed, — the officers nearly all killed — the men by wholesale, — the rout complete, — too shocking to think of,— and a surprise into the bargain!"

When near the door in his agitated march about the room, he stopped and burst forth, "Yes, here on this very spot I took leave of him; I wished him success and honor; 'You have your instructions,' I said, 'from the Secretary of War; I had a strict eye to them, and will add one word — Beware of a surprise! You know how the Indians fight us!' He went off with that as my last solemn warning thrown into his ears. And yet, to suffer that army to be cut to pieces — hacked, butchered, tomahawked — by a surprise! O God, O God, he's worse than a murderer! How can he answer it to his country! The blood of the slain is upon him — the curse of the widows and orphans — the curse of Heaven!"

The secretary relates that this torrent of passion burst forth in appalling tones. The President's frame shook. "More than once he threw his hands up as he hurled imprecations upon St. Clair." But at length he got his feelings under control, and after a pause he remarked, "I will hear him without prejudice. He shall have full justice." St. Clair was, indeed, treated with marked leniency. A committee of the House reported that the failure of the expedition could not "be imputed to his conduct, either at any time before or during the action." St. Clair was continued in his position as Governor of the Northwest Territory and remained there until 1802.

Notwithstanding the dire results of relying on casual levies, Congress was still stubbornly opposed to creating an effective force under national control, and in this attitude to some extent reflected even frontier sentiment. Ames in a letter of January 13, 1792, wrote that "even the views of the western people, whose defense has been undertaken by government, have been unfriendly to the Secretary of War and to the popularity of the Government. They wish to be hired as volunteers, at two-thirds of a dollar a day to fight the Indians. They are averse to the regulars." By the Act of March 5, 1792, Congress authorized three additional regiments, with the proviso, however, that they "shall be discharged as soon as the United States shall be at peace with the Indian tribes." This legislation, nevertheless, was a great practical improvement on the previous act. General Wayne, who now took command, was fortunately circumstanced in that he was under no pressure to move against the Indians. Public opinion favored a return to negotiation, so that he had time to get his troops under good discipline. He did not move the main body of his troops until the summer of 1794, and on August 20, he inflicted a smashing defeat on the Indians, at a place known as the Fallen Timbers, followed up the victory by punitive expeditions to the

Indian towns, and burned their houses and crops. The campaign was a complete success. The Indians were so humbled by their losses that they sued for peace, and negotiations began which were concluded in the summer of 1795 by the treaty of Greenville, under which the Northwestern tribes ceded an extensive territory to the United States.

It was notorious that the trouble which the American authorities had experienced with the Indians had been largely due to the activity of British agents. In his report Wayne noted that the destruction effected by his troops included "the houses, stores, and property of Colonel McKee, the British agent, and principal stimulator of the war now existing between the United States and the savages." A sharp correspondence took place between Wayne and Major William Campbell, commanding a British post on the Miami. Campbell protested against the approach of Wayne's army, "no war existing between Great Britain and America." Wayne assented to this statement, and then asked what he meant "by taking post far within the well known and acknowledged limits of the United States." Campbell rejoined that he had acted under orders and as to his right, that was a matter which were best left to "the ambassadors of our different nations." Campbell refused to obey Wayne's demand to withdraw, and Wayne ignored Campbell's threat to fire if he were approached too close. Wayne reported that the only notice he took of this threat was "by immediately setting fire to and destroying everything within view of the fort, and even under the muzzles of the guns." "Had Mr. Campbell carried his threats into execution," added Wayne, "it is more than probable he would have experienced a storm." No collision actually took place at that time but there was created a situation which, unless it were removed by diplomacy, must have eventually brought on war.

CHAPTER V

TRIBUTE TO THE ALGERINES

At the time when Washington took office, the captains and crews of two American vessels, which had been seized by Algerine Corsairs in 1785, still remained in captivity. The Continental Congress had made some efforts in their behalf which were contemptuously received. The Dey of Algiers did not wish any treaty with the United States; but he did want $59,496.00 for the twenty-one captives whom he then held. Farther than that negotiation had not progressed. Agents of the United States were advised that, if such a high amount were paid, the Corsairs would pursue American vessels in preference to those of any other nation, and that the shrewd thing would be to pretend indifference to the fate of the captives. This advice was acted upon even to the extent of cutting off the supplies which had been forwarded to the captives through the Spanish consul at

Algiers. The summary method which was pursued was that of dishonoring bills drawn by him to cover his expenditures.

Jefferson, who while Minister to France had been closely connected with these proceedings, was called upon by Congress for a report upon them, not long after he took office as Secretary of State. This report, December 28, 1790, set forth the fact that the Mediterranean trade, which had employed from eighty to one hundred ships with about twelve hundred seamen, had been almost destroyed. In the interest of the negotiations, it had been necessary "to suffer the captives and their friends to believe for a while, that no attention was paid to them, no notice taken of their letters," and they were "still under this impression." Jefferson contented himself with submitting the facts in the case, remarking that "upon the whole it rests with Congress to decide between war, tribute, and ransom. If war, they will consider how far our own resources shall be called forth, and how far they will enable the Executive to engage, in the forms of the Constitution, the coöperation of other Powers. If tribute or ransom, it will rest with them to limit and provide the amount; and with the

Executive, observing the same constitutional forms, to make arrangements for employing it to the best advantage."

The problem which Jefferson thus put before Congress was a singularly difficult one. Among the captives was Captain Richard O'Brien, whose ship, the *Dauphin* of Philadelphia, was taken July 30, 1785. He had a ready pen and, apparently, had unrestricted access to the mails. His letters were those of a shrewd observer and depicted a situation that bristled with perplexity. The Algerines had about a dozen vessels, their armament ranging from ten to thirty-six guns, but of these vessels only two belonged to the Government, the others being private ventures. Though they preyed on merchantmen, they avoided engagements, and did not come out at all if there were vessels cruising for them. A blockade was effective only while it lasted. Whenever it was raised, out came the Corsairs again. An occasional bombardment of their port did not cow them and had no permanent effect. A French official described it as being "like breaking glass windows with guineas." The Algerines made treaties with some Powers in consideration of tribute but refused peace to others on any terms, as they did not desire to shut out all opportunity for their time-honored sport of piracy.

Congress was slow to take action of any kind. In January, 1791, Maclay noted that a committee had decided that the Mediterranean trade could not be preserved without an armed force to protect it, and that a navy should be established as soon as the Treasury was in a position to bear the expense. Meanwhile the President began fresh negotiations, which were attended by singular fatality. Thomas Barclay, who had some diplomatic experience, was commissioned to go to the Emperor of Morocco. When Barclay reached Gibraltar, he was taken ill, and, after being removed to Lisbon, he died. Admiral John Paul Jones was then appointed special commissioner to arrange for the ransom of the captives. As he had then left the Russian service and was living in Paris, it was supposed that his services would be available, but he died before the commission could reach him. The delay caused by these events was made so much worse by the slow transmission of intelligence that two years elapsed before a fresh start was made by placing the conduct of matters in the hands of Colonel David Humphreys, then Minister to Portugal. Humphreys had gone as far as Gibraltar on his mission when he learned that a truce had been suddenly arranged between Portugal and Algiers. This was alarming news, since it meant that the Algerines could now pass into the Atlantic from which they had been excluded by Portuguese war-vessels stationed in the strait of Gibraltar. "I have not slept since the receipt of the news of this the hellish plot," wrote Edward Church, the United States consul at Lisbon. Church was energetic in spreading the intelligence, which fortunately reached some American shipmasters in time to save them. In October, 1793, as thirteen American vessels were in the port of Lisbon afraid to venture out, Church pleaded their case so vigorously that the Portuguese government agreed to give them an armed convoy. Nevertheless the Algerines found plenty of game among American ships then at sea, for they captured ten vessels and added one hundred and five more Americans to the stock of slaves in Algiers. "They are in a distressed and naked situation," wrote Captain O'Brien, who had himself then been eight years in captivity.

Humphreys made arrangements by which they received clothing and a money allowance ranging from twelve cents a day for a seaman up to eight dollars a month for a captain. Nothing, however, could be done in the way of peace negotiations. One of Humphreys' agents reported that the Dey could not make peace even if he really wanted to do so. "He declared to me that his interest does not permit him to accept your offers, Sir, even were you to lavish millions upon him, 'because,' said he, 'if I were to make peace with everybody, what should I do with my Corsairs? What should I do with my soldiers? They would take off my head, for want of other prizes.'"

This was an honest disclosure of the situation. Humphreys wrote Jefferson that "no choice is left for the United States but to prepare a naval force for the protection of their trade." Captain O'Brien wrote, "By all means urge Congress to fit out some remarkably fast sailing cruisers, well appointed and manned." In January, 1794, accordingly, a committee of the House brought in a resolution for building four ships of 44 guns and two of 20 guns each. The debate began on February 6, and for some time was altogether one-sided, with one speaker after another opposing the creation of a navy. Madison, as was now his habit, had doubts as to the propriety of the measure. He fancied that peace "might be purchased for less money than this armament would cost." Clark of New Jersey had "an objection to the establishment of a fleet, because, when once it had been commenced, there would be no end to it." He had "a scheme which he judged would be less expensive and more effectual. This was to hire the Portuguese to cruise against the Algerines." Baldwin of Georgia thought that "bribery alone could purchase security from the Algerines." Nicholas of Virginia "feared that we were not a match for the Algerines."

Smith of Maryland and Fitzsimmons of Pennsylvania championed the resolution, and Fisher Ames made some remarks on Madison's lack of spirit that caused Madison to define his position. He proposed as a substitute for the pending measure that money should "be employed in such a manner as should be found most effectual for obtaining a peace with the Regency of Algiers; and failing of this, that the sum should be applied to the end of obtaining protection from some of the European Powers." This motion warmed up the debate. Giles of Virginia came to Madison's support in a style that was not helpful. He "considered navies altogether as very foolish things. An immense quantity of property was spread on the water for no purpose whatever, which might have been employed by land to the best purpose." The suggestion that the United States should be a hermit nation was an indiscreet exposure of the logical significance of Madison's plan, and it perhaps turned the scale in favor of employing force.

The bill came up in the House for final passage on March 10, 1794. Its opponents now sparred for time, but a motion to recommit in order to give opportunity for further consideration was defeated by 48 to 41. Giles made a final effort, by a long and elaborate address, in which he argued that the effect of fitting out a navy would be to involve the United States in war with all the European Powers. Moreover, a navy would be dangerous to American liberty. "A navy is the most expensive of all means of defense, and the tyranny of governments consists in the expensiveness of their machinery." He pointed to the results of British naval policy. "The government is not yet destroyed, but the people are oppressed, liberty is banished." The French monarchy had been ruined by its navy. He was "astonished, with these fatal examples before our eyes, that there should be gentlemen who would wish to enter upon this fashionable system of politics." In discussing the expense of maintaining a navy, he expressed his fear that it would eventually bring back the miseries of feudalism.

William Smith of South Carolina made a reply in which he defined the issue as being between defense and tribute; but Giles had the last word. He wanted to know whether it was maintained that the frigates it was proposed to build would "boldly march upon land and break the chains of the prisoners?" He begged Congress not to do what "would irritate the barbarians and furnish additional misery to the unfortunate prisoners." In this closing struggle over the bill Giles fought single-handed. When he had quite finished, the bill was passed by 50 yeas to 39 nays, a result which showed a decided gain in strength from the discussion.

The debates in the Senate have not been preserved, but the Senate was so evenly divided that it took the casting vote of the Vice-President to pass the bill, which became law March 27, 1794. In order to get it passed at all, a proviso had been tacked on that, if peace terms could be arranged, "no farther proceeding be had under this Act." In September, 1795, a treaty of peace with Algiers was finally concluded, after negotiations had been facilitated by a contingent fee of $18,000 paid to "Bacri the Jew, who has as much art in this sort of management as any man we ever knew," the American agents reported. It was a keen bargain, as Bacri had to propitiate court officials at his own risk, and had to look for both reimbursement and personal profit, too, out of the lump sum he was to receive in event of his success. It can hardly be doubted that he had the situation securely in hand before making the bargain. The money paid in Algiers for the ransom of the captives, for tribute and for presents to officials amounted to $642,500.00. But in addition the United States agreed to build a frigate for the Algerine navy and also supply naval stores, which with incidental expenses brought the total cost of the peace treaty up to $992,463.25. Moreover, the United States agreed to pay an annual tribute of 12,000 sequins, —about $27,500.

By the terms of the navy act, the United States had to stop building vessels for its own protection. Of those which had been authorized, the frigates *Constitution*, *United States*, and *Constellation* were under way and were eventually completed. The timber, with material that had been collected for the other vessels, was sold, except what was needed for the frigate which was to be presented to the Algerines, and which was to be built at Portsmouth, N. H. The whole affair was a melancholy business that must have occasioned Washington deep chagrin. In his address to Congress, December 7, 1796, announcing the success of the negotiations for effecting the release of the captives, he observed that "to secure respect to a neutral flag requires a naval force, organized and ready to vindicate it from insult or aggression."

CHAPTER VI

FRENCH DESIGNS ON AMERICA

A FEW months before France declared war upon England, February 1, 1793, Edmond Genet was appointed French Minister to the United States. He landed at Charleston, April 8, and at once began activities so authoritative as to amount to an erection of French sovereignty in the United States. The subsequent failure of his efforts and the abrupt ending of his diplomatic career have so reacted upon his reputation that associations of boastful arrogance and reckless incompetency cling to his name. This estimate holds him too lightly and underrates the peril to which the United States was then exposed. Genet was no casual rhetorician raised to important office by caprice of events, but a trained diplomatist of hereditary aptitude and of long experience. His father was chief of the bureau of correspondence in the Department of Foreign Affairs for the French monarchy, and it was as an interpreter attached to that bureau that the son began his career in 1775. While still a youth, he gained literary distinction by his translations of historical works from Swedish into French. Genet was successively attached to the French Embassies at Berlin and Vienna, and in 1781 he succeeded his father in the Department of Foreign Affairs. In 1788, he was Secretary of the French Embassy at St. Petersburg, where his zeal for French Revolutionary principles so irritated the Empress Catherine that she characterized him as "a furious demagogue," and in 1792 he was forced to leave Russia. In the same year he was named Ambassador to Holland, and thence was soon transferred to the United States.

It is obvious that a man of such experience could not be ignorant of diplomatic forms and of international proprieties of behavior. If he pursued a course that has since seemed to be a marvel of truculence, the explanation should be sought in the circumstances of his mission more than in the nature of his personality. When the matter is considered from this standpoint, not only does one find that Genet's proceedings become consistent and intelligible, but one becomes deeply impressed with the magnitude of the peril then confronting the United States. Nothing less than American independence was at stake.

It should be borne in mind that France, in aiding America against England, had been pursuing her own ends. In August, 1787, the French government advised its American representative that it had observed with indifference the movements going on in the United States and would view the break-up of the Confederation without regret. "We have never pretended to make of America a useful ally; we have had no other object than to deprive Great Britain of that vast continent." But, now that war with England had broken out again, it was worth while making an effort to convert America into a useful ally. Jefferson, while Minister to Paris, had been sympathetic with the Revolutionary movement. In 1789, the English Ambassador reported to his government that Jefferson was much consulted by the leaders of the Third Estate. On the other hand, Gouverneur Morris, who was then living in Paris, sympathized frankly with the King. Nevertheless he was chosen to succeed Jefferson as the American Minister. In notifying him of the appointment, Washington let him know that there had been objections. "It was urged that in France you were considered as a favorer of the aristocracy, and unfriendly to its Revolution." Washington's reminder that it was his business to promote the interest of his own country did not have any apparent effect on Morris's behavior. He became the personal agent of Louis XVI, and he not only received and disbursed large sums on the King's account, but he also entered into plans for the King's flight from Paris. During the Reign of Terror which began in 1792, he behaved with an energy and an intrepidity honorable to him as a man; in general, however, his course tended to embroil and not to guard American interests.

In the face of the European coalition against revolutionary France, the principle of action was that announced by Danton, — "to dare, and to dare, and without end to dare." Genet therefore went on his mission to America keyed to measures which were audacious but which can hardly be described as reckless. By plunging heavily he might make a big winning; if he failed, he was hardly worse off than if he had not made the attempt. To draw the United States into the war as the ally of France was only one part of his mission. He was also planning to reëstablish the

French colonial empire, the loss of which was still an unhealed wound. Canada, Louisiana, and the Floridas were all in his mind. In Louisiana, France regarded conditions as being so favorable that Genet was instructed to make special efforts in that quarter. Spain, which had entered the coalition against republican France, held the lower Mississippi. Spain was therefore the common enemy of France and of the American settlements west of the mountains. Ought not then those two republican interests to work together to expel Spain and to seize Louisiana? Moreover, there was a belief, not without grounds, that the older States which formed the American union were indifferent to the needs and interests of the country west of the Alleghenies and would be more relieved than afflicted if it should take its destinies into its own hands. Such considerations animated a group of Americans in Paris, among whose prominent members were Thomas Paine, the pamphleteer, Joel Barlow, the poet, and Dr. James O'Fallon, a Revolutionary soldier now interested in Western land speculation. All were then ardent sympathizers with the French Revolution, and they entered heartily into the design of stirring up the Western country against Spain. The project attracted some frontier leaders, among them George Rogers Clark, famous for his successful campaigns against the hostile Indians and the British during the Revolutionary War. He was to lead a force of Western riflemen against the Spanish posts in Louisiana, and Genet brought with him blank brevets of officers up to the grade of captain for bestowal on the Indian chiefs who would coöperate. The expenses of the expedition were to be met by collections which Genet expected to make from the treasury of the United States on account of sums due to France.

The project of using the United States as a French base could claim legal rights under the treaties of 1778 between France and the United States. There were two treaties, both concluded on the same day. One, entitled a treaty of amity and commerce, was a mutual conveyance of privileges; it provided that the ships of war of each country should defend the vessels of the other country against all attacks that might occur while they were in company. Besides this right of convoy, each country had the right to use the ports of the other, either for ships of war or for privateers and their prizes, "nor shall such prizes be arrested or seized when they come to and enter the ports of either party; nor shall the searchers or other officers of those places search the same, or make any examination concerning the lawfulness of such prizes, but they may hoist sail at any time, and depart." All vessels of either country had the right to take refuge in the ports of the other, whether from stress of weather or pursuit of enemies, "and they shall be permitted to refresh and provide themselves at reasonable rates, with victuals and all things needful for the sustenance of their persons or reparation of their ships, and conveniency of their voyage; and they shall no ways be detained or hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance." It was expressly provided that such hospitality should not be extended to vessels of an enemy of either country. The accompanying instrument, entitled a treaty of alliance, was a mutual guarantee of territorial possessions, "forever against all other powers." These broad rights and privileges were supplemented by the convention of 1788 on consular functions, which facilitated the organization of a consular jurisdiction competent to deal with cases arising from the treaties. There was still due to France on loans contracted during the Revolution a remainder of about $2,300,000 payable by instalments, subject to the proviso that "Congress and the United States" had "the liberty of freeing themselves by anticipated payments should the state of their finances admit." It was planned to get the United States to reciprocate the past favors of France by favoring her now, if not by direct payments of money, at least by acceptances which Genet could use in purchasing supplies. The fact that whatever in the way of money or accommodations was obtained in the United States would be used in business in that country was counted upon to facilitate the transaction.

These facts form the background against which Genet's activities should be viewed. He came with deliberate intent to rush the situation, and armed with all needful powers for that purpose, so far as the French government could confer them. According to a dispatch from Morris to the State Department, Genet "took with him three hundred blank commissions which he is to distribute to such as will fit out cruisers in our ports to prey on the British commerce."

At Charleston, Genet received an enthusiastic reception. The Revolutionary commander, General Moultrie, who was then governor of South Carolina, entered so cordially into Genet's plans that in his first dispatch home, Genet was able to say to his government that Moultrie had permitted him to arm privateers and had assisted the various branches of his mission in every possible way. Such was Genet's energy that within five days after his arrival he had opened a recruiting station at which American seamen were taken into the French service; he had commissioned American vessels as French privateers; and he had turned the French consul's office into an admiralty court for which business was provided by the prizes that were being brought in.

After seeing under way all matters that he could attend to in Charleston, Genet moved on to Philadelphia, and received on his way thither such greetings as to give to his journey the character of a triumphal progress. Meanwhile, *L'Ambuscade*, the French frigate which had brought Genet to Charleston, was proceeding to Philadelphia, taking prizes on her way and sending them to American ports. In Delaware Bay she captured the *Grange*, an English merchantman lying there at anchor, and took this vessel with her to Philadelphia as a prize. As Genet neared Philadelphia on

May 16, *L'Ambuscade* gave notice by firing three guns, at which signal a procession was formed to meet Genet at Gray's Ferry and escort him to his lodgings. He found awaiting him a letter from George Rogers Clark, which gave an account of his plans for the invasion of Louisiana and the capture of New Orleans, and which announced his readiness to start if he were assisted by some frigates and provided with three thousand pounds sterling to meet expenses. Genet received reports from other agents or friendly correspondents in the Spanish territory, and so active was he in forwarding the objects of his mission that on June 19 he was able to write to his government, "I am provisioning the West Indies, I excite the Canadians to break the British yoke, I arm the Kentukois and prepare a naval expedition which will facilitate their descent on New Orleans."

These claims were well founded. Genet did, in fact, make an effective start, and had he been able to command funds he might have opened a great chapter of history. George Rogers Clark was the ablest and most successful commander that the frontier had yet produced, and such was the weakness of the Spanish defenses that had his expedition been actually launched as planned, the conquest of Louisiana might indeed have been accomplished. It was not any defect in Genet's arrangements that frustrated his plans, but his inability to raise money and the uncertainty of his position as the agent of a government which was undergoing rapid revolutionary change.

News that the French Republic had declared war against Great Britain reached the United States early in April, 1793. Washington, who was then at Mount Vernon, wrote to Jefferson that "it behooves the Government of this country to use every means in its power to prevent the citizens thereof from embroiling us with either of those Powers, by endeavoring to maintain a strict neutrality," and he requested that the Secretary should "give the subject mature consideration, that such measures as shall be deemed most likely to effect this desirable purpose may be adopted without delay." On arriving at Philadelphia a few days later, Washington was met by a distracted Cabinet. The great difficulty was the conflict of obligations. The United States had a treaty of alliance with France; it had a treaty of peace with Great Britain. The situation had become such that it could not sustain both relations at the same time. If the

United States remained neutral, it would have to deny to France privileges conferred by the treaty which had been negotiated when both countries were at war with Great Britain. How far was that treaty now binding? It had been made with "the Most Christian king," whose head had been cut off. Did not his engagements fall with his head? That was the very position taken by the government of the French Republic, which had asserted the right to decide what treaties of the old monarchy should be retained and what rejected. As an incident of the present case, the question was to be decided whether the ambassador of the French Republic should be received.

Such were the issues that Washington's Administration had to face, at a time when the whole country was thrilling with enthusiasm in behalf of the French Republic. Chief Justice Marshall left on record his opinion that this feeling "was almost universal," and that "a great majority of the American people deemed it criminal to remain unconcerned spectators of a conflict between their ancient enemy and republican France."

Washington acted with his customary deliberation. On April 18, 1793, he submitted to the members of his Cabinet thirteen questions. Jefferson, who held that the French treaty was still operative, noted that the questions reached him in Washington's own handwriting, "yet it was palpable from the style, their ingenious tissue and suite, that they were not the President's, that they were raised upon a prepared chain of argument, in short, that the language was Hamilton's and the doubts his alone." In Jefferson's opinion they were designed to lead "to a declaration of the Executive that our treaty with France is void." Jefferson was right as to Hamilton's authorship. At a time when Jefferson had no advice to give save that it would be well to consider whether Congress ought not to be summoned, Hamilton had ready a set of interrogatories which subjected the whole situation to close analysis. The critical questions were these:

"Shall a proclamation issue for the purpose of preventing interferences of the citizens of the United States in the war between France and Great Britain, &c.? Shall it contain a declaration of neutrality or not? What shall it contain?

"Are the United States obliged, by good faith, to consider the treaties heretofore made with France as applying to the present situation of the parties? May they either renounce them, or hold them suspended till the government of France shall be established?"

To the interrogatories framed by Hamilton, Washington added one which presented the point raised by Jefferson —"Is it necessary or advisable to call together the two Houses of Congress, with a view to the present posture of European affairs? If it is, what shall be the particular object of such a call?"

The Cabinet met on April 19. On the question of a proclamation of neutrality Jefferson argued that such a proclamation would be equivalent to a declaration that the United States would not take part in the war, and that this matter did not lie within the power of the Executive, since it was the province of Congress to declare war. Congress ought therefore to be called to consider the question. Hamilton, who held that it was both the right and the duty of the President to proclaim neutrality, was strongly opposed to summoning Congress. In a brief record of the proceedings he remarked that "whether this advice proceeded from a secret wish to involve us in a war, or from a constitutional timidity, certain it is such a step would have been fatal to the peace and tranquillity of America." The matter was finally compromised by an unanimous agreement that a proclamation should be issued "forbidding our citizens taking any part in any hostilities on the seas with or against any of the belligerent powers; and warning them against carrying to any such powers any of those articles deemed contraband, according to the modern usage of nations; and enjoining them from all acts and proceedings inconsistent with the duties of a friendly nation toward those at war." Jefferson's scruples having been appeased by avoiding the use of the term "neutrality," it was now unanimously decided that Congress should not be called. It was further decided that the French Minister should be received. Jefferson and Randolph, however, were of opinion that he should be received without conditions, while Hamilton, supported by Knox, held that the Minister ought to be apprised of the intention to reserve the question whether the treaties were still operative, "lest silence on that point should occasion misconstruction." The even division of the Cabinet on this point was in practical effect a victory for Jefferson. The Cabinet was unable to reach any decision in the matter of treaty obligations. Jefferson held that they were still operative; Hamilton, that they were "temporarily and provisionally suspended." Knox sided with Hamilton, and Randolph, although he at first sided with Jefferson, was so shaken in his opinion by Hamilton's argument that he asked further time for consideration. Eventually written opinions were submitted by Hamilton, Jefferson, and Randolph, confirming the views they had previously expressed, and, as Knox concurred with Hamilton, the Cabinet was still evenly divided on that fundamental question.

The proclamation, on the lines upon which all had agreed, was draughted by Randolph who showed it to Jefferson in order to assure him that "there was no such word as neutrality in it." Jefferson, whose own account this is, did not mention that he raised any objection to the wording of the proclamation at the time, though a few months later he referred to it in his private correspondence as a piece of "pusillanimity," because it omitted any expression of the affection of America for France. The proclamation was issued on April 22, two weeks after the arrival of Genet at Charleston. The procedure that had been adopted at Jefferson's instance avoided none of the difficulties that a declaration of neutrality would have encountered but rather increased them by putting the

Government in a false position. The mere omission of the term did not prevent it from being known as a neutrality proclamation. It was at once so designated and has always been so considered. Jefferson himself, in advising the American foreign representatives of the policy of the Government, said that it would be "a fair neutrality"; and, in writing to Madison a few days after the proclamation had been issued, he remarked, "I fear a fair neutrality will prove a disagreeable pill to our friends, though necessary to keep us out of the calamities of war."

By its terms, however, the proclamation was simply an admonition to American citizens to keep out of the war, with notice that, if they got into trouble by engaging in contraband trade, they would not receive the protection of the United States, and would be liable to prosecution for the commission of acts of a nature to "violate the law of nations." It is manifest that the question whether or not the French treaty was still in operation was of great practical importance. If it was still in force, the treaty formed part of the law of the land, and American citizens might plead immunity for acts done in pursuance of its provisions. Hamilton was for suspending the treaty since a situation had arisen which made its provisions inconsistent with a policy of neutrality. His main contention was that the obligations imposed by the treaty of '78 were no longer binding on the United States, since they contemplated only defensive war. By her declaration of war France had taken the offensive, thereby relieving the United States of her reciprocal obligations. Jefferson held that the treaty was still operative, for even if its provisions apparently required the United States to engage in the war, it did not follow that such action would be an actual consequence. The possibility was "not yet certain enough to authorize us in sound morality to declare, at this moment, the treaties null."

Meanwhile Genet was left in a position in which he had a perfect right to claim all privileges conferred on France by the treaty. The result was a curious chapter of diplomatic correspondence. Genet took an attitude of indignant remonstrance at the duplicity of the American position. Did not the United States have a treaty with France? By what authority then did the Administration interfere with him in the enjoyment of his rights as the representative of France, and interfere with American citizens in their dealings with him?

He shrewdly refrained from any attempt to defend the capture of the *Grange* by *L'Ambuscade* in Delaware Bay. "The learned conclusions of the Attorney-General of the United States, and the declarations of the American Government, have been on this subject the rule of my conduct. I have caused the prize to be given up." But he stood firm on rights secured by the treaty. "As long as the States, assembled in Congress, shall not have determined that this solemn engagement should not be performed, no one has the right to shackle our operations, and to annul their effect, by hindering those of our marines who may be in the American ports, to take advantage of the commissions which the French Government has charged me to give to them, authorizing them to defend themselves, and fulfill, if they find an opportunity, all the duties of citizens against the enemies of the State."

This was using an argument borrowed from Jefferson's abundant stock of constitutional limitations. Genet was, of course, advised of the dissensions in the Cabinet. He was on such confidential terms with Jefferson that he talked freely about the projected raid on Louisiana. Jefferson noted in his diary that "he communicated these things to me, not as Secretary of State, but as Mr. Jefferson." Jefferson told Genet that he "did not care what insurrections should be excited in Louisiana," but that "enticing officers and soldiers from Kentucky to go against Spain was really putting a halter about their necks, for that they would assuredly be hung if they commenced hostilities against a nation at peace with the United States." So great is the force of legal pedantry that Jefferson was unable to agree that the President should proclaim neutrality in clear and positive terms; but that same pedantry was effectively employed in covering the legal flaws of Jefferson's position in his notes to Genet. He attenuated the treaty obligations by strict construction and also by reservations founded on the general principles of international law. "By our treaties with several of the belligerent Powers," he told Genet, "we have established a style of peace with them. But without appealing to treaties, we are at peace with them all by the law of nature: for, by nature's law, man is at peace with man." Hence the propriety of forbidding acts within American jurisdiction that would cause disturbance of this peace, a point on which he quoted copiously from Vattel. Genet manifested some irritation at being referred to treatises on international law when he was resting his case on a treaty the validity of which Jefferson acknowledged. "Let us not lower ourselves," he wrote, "to the level of ancient politics by diplomatic subtleties. Let us be frank in our overtures, in our declarations, as our two nations are in their affections, and, by this plain and sincere conduct, arrive at the object by the shortest way."

Logically Jefferson's position was that of maintaining the validity of the treaty while opposing the fulfillment of its obligations. At the same time he had to carry on a correspondence with Hammond, the British Minister, who was making complaints of the use of American ports for French depredations on British commerce, and to him Jefferson pleaded entire willingness to discharge in good faith the obligations of a neutral Power. It may seem as if Jefferson was attempting the impossible feat of trying to ride at one time two horses going in opposite directions, but such was his dexterity that in appearance he was largely successful. Meanwhile he contrived to throw on Hamilton and his adherents the blame for the feebleness and inconsistency of national policy. In letters to his Congressional lieutenants, Monroe in the Senate and Madison in the House, he lamented "the anglophobia, secret antigallomany" that have "decided the complexion of our dispositions." He spoke scornfully of Randolph, whom he regarded as so irresolute that the votes in the Cabinet were "generally two and a half against one and a half," by which he meant that Hamilton and Knox stood together against Jefferson, while Randolph divided his influence between the two factions.

So inflamed was the state of public opinion that a rising against the Government seemed possible. In a letter written twenty years later, John Adams described "the terrorism excited by Genet, in 1793, when ten thousand people in the streets of Philadelphia, day after day, threatened to drag Washington out of his house, and effect a revolution in the Government, or compel it to declare war in favor of the French Revolution and against England." Adams related that he "judged it prudent and necessary to order chests of arms from the War Office" to be brought into his house to defend it from attack, and he had it from "the coolest and firmest minds" that nothing but the outbreak of yellow fever in Philadelphia that summer "could have saved the United States from a fatal revolution of government." On the other hand, letters written by Hamilton during the time of all this excitement show that he thought little of it, although he more than anyone else was its target. In May, 1793, he wrote that the number of persons who went to meet Genet "would be stated high at a hundred," and he did not believe that a tenth part of the city participated in the meetings and addresses of Genet's sympathizers. "A crowd will always draw a crowd, whatever be the purpose. Curiosity will supply the place of attachment to, or interest in, the object." Washington's own letters at this period show no trace of concern about his personal safety though he smarted under the attacks on his motives. An entry of August 2, 1793, in Jefferson's private diary, forming the volume since known as "The Anas," relates that at a cabinet meeting Knox exhibited a print entitled the funeral of George W——n, in which the President was placed on a guillotine. "The President was much inflamed; got into one of those passions when he cannot command himself; ran much on the personal abuse which had been bestowed upon him; defied any man on earth to produce one single act of his since he had been in the Government which was not done from the purest motives; that he had never repented but once the having slipped the moment of resigning his office, and that was every moment since; that by God he had rather be in his grave than in his present situation; that he had rather be on his farm than to be made emperor of the world; and that they were charging him with wanting to be king; that that rascal Freneau sent him three of his papers every day, as if he thought he would become the distributor of his papers; that he could see in this nothing but an impudent design to insult him."

Freneau was one of Jefferson's subordinates in the State Department, combining with his duties there the editorship of a newspaper engaged in spreading the calumny that the Administration was leaning toward monarchy through the influence of Hamilton and his friends, who despised republicanism, hated France, and loved England. This journalistic campaign went on under the protection of Jefferson to the disturbance of an administration of which Jefferson himself formed a part. This circumstance has given trouble to Jefferson's biographers, and it is now somewhat difficult to make those allowances to which Jefferson is entitled from the candid historian. Such behavior at the present day would be regarded as treacherous, for it is now a settled doctrine that it is the duty of a member of the President's Cabinet to give unreserved support to his policy, or to resign. But at that period, neither in England nor in the United States, did this view of cabinet solidarity prevail. It was not considered against the rules of the game for a cabinet official to use any opportunities within reach for promoting his aims or to boast such behavior as patriotic zeal. Jefferson, who wanted to resign and stayed on only at Washington's earnest desire, certainly rendered a service to the Administration, which was then so unpopular that Jefferson's connection with it was a political asset of great value.

Hamilton also made use of the services of journalism. When on June 29, 1793, publication began of a series of eight articles signed "Pacificus," it was well known that Hamilton was the author. The acute analysis and cogent reasoning of these articles have given them classic rank as an exposition of national rights and duties. Upon minds open to reason their effect was marked. Jefferson wrote to Madison, "For God's sake, my dear Sir, take up your pen, select the most striking heresies, and cut him to pieces in the face of the public." Madison did take up his pen, but he laid it down again without attempting to controvert Hamilton's argument. The five articles which Madison wrote over the signature "Helvidius" do not proceed farther into the subject than a preliminary examination of executive authority, in which he laid down principles of strict construction of the Constitution which have never been adopted in practice and which are now interesting only as specimens of dialectic subtlety.

Although as an electioneering tactician Jefferson had superior ability, neither he nor any of his associates was a match for Hamilton in debate. As the issues were discussed, the Jeffersonians lost ground, and for this they put the blame on Genet. By July 7, Jefferson was writing to Madison that Genet "renders my position immensely difficult," and thereafter in the correspondence of Jefferson, Madison, and Monroe, Genet figures as a rash man whose indiscretions embarrassed his friends and impeded his own objects. This view has to a large extent passed over into history, but when it is considered that Genet did not come to America for Jefferson's comfort but to accomplish certain things for his own government, it must be owned that he had considerable success. Although his means were small, he managed to engage in the French service an active American fleet including such vessels as *Le Cassius, L'Ami de le Point à Petre, L'Amour de la Liberté, La Vengeance, La Montagne, Le Vainqueur de la Bastille, La Carmagnole, L'Espérance, Le Citoyen Genet, Sans Pareil,* and *Le Petit Démocrate.* The last-mentioned vessel was originally an English merchantman, the brig *Little Sarah,* brought into Philadelphia harbor as a French prize. When it was learned that this vessel had been armed and equipped for service as a French man-of-war, Governor Mifflin of Pennsylvania gave orders that the vessel should be detained. Genet threatened forcible resistance, and a clash might have occurred, had Jefferson not intervened. He went to Genet's house on Sunday to persuade him not to move the vessel until the President could decide the case. Genet refused to give any promise, but remarked that the vessel would probably not be ready to depart for several days. Jefferson thereupon exerted himself successfully to prevent the taking of any steps to detain the vessel.

Washington, harassed and confused by the dissensions of his Cabinet, now desired that the advice of the justices of the Supreme Court be taken. Hamilton was opposed to a proceeding which involved prejudgment by the Court on questions which might come before it in due course of law, and which seemed to him also to be an avoidance of the proper responsibility of the executive. Nevertheless he took part in preparing the case, and of the twenty-nine questions submitted to the Supreme Court, Hamilton framed twenty-one, Jefferson seven, and Washington himself the last. Jefferson notified Genet of this consultation as an additional reason for patience, "the object of it being to obtain the best advice possible on the sense of the laws and treaties respecting the several cases. I am persuaded you will think the delay well compensated." Genet did not think so, and *Le Petit Démocrate* put to sea in defiance of American authority.

The justices declined to answer the questions, and the Administration had to face its responsibilities on its own judgment of its rights and duties. At least one member of the Administration had clear and positive ideas on that subject. Hamilton, who in his "Pacificus" letters had given a masterly exposition of international obligations, now took up the particular issues raised by Genet's claims, which at that time were receiving ardent championship. Freneau's *National Gazette* held that Genet had really acted "too tamely," had been "too accommodating for the peace of the United States." Hamilton now replied by a series of articles in the *Daily Advertiser* over the signature "No Jacobin," in which Genet's behavior was reviewed. After five articles had appeared in rapid succession, the series was abruptly terminated because Hamilton was taken down by the yellow fever.

The journalistic war was almost in the nature of a duel between the State and the Treasury Departments. Genet must have been amused. Lack of funds hindered his activities more than anything else. Jefferson had advised Washington that, "if the instalments falling due in this year could be advanced without incurring more danger," it would be well to make the payments, as he "thought it very material to keep alive the friendly sentiments of France." But this was a matter which pertained to Hamilton's own department, and in that field his advice controlled Washington. Genet could do nothing in this direction, and before the affair of *Le Petit Démocrate* he had ceased to expect financial aid.

Jefferson was now so angry and indignant that he no longer opposed the suggestions that had been made in cabinet meetings that Genet should be dismissed, and the note on that subject which he drafted for transmission to the French Government is an able document. The French Government, with ample reason, conditioned the recall of Genet upon the recall of Morris, who was succeeded by James Monroe. Meanwhile Genet's situation had become perilous through revolution at home. On October 16, 1793, his Government issued an order for his arrest. The United States now became his asylum. He acquired citizenship, married a daughter of Governor Clinton of New York, and settled down to a useful and respected career as a country gentleman devoted to the improvement of agriculture. He died at his home, Schodak, New York, in 1834, after having founded an American family.

At the time when Genet, favored by the exasperated state of Western sentiment over the navigation of the lower Mississippi, was promoting an attack upon the Spanish posts, the Administration had already been engaged for a long time in efforts to secure "full enjoyment of that navigation," as well as a settlement of the southwestern boundary. In December, 1791, Washington nominated William Carmichael, chargé d'affaires in Spain, and William Short, then chargé d'affaires in France, commissioners to make a treaty. Their efforts proved unsuccessful, and in 1794 the Spanish commissioner in the United States gave notice that they were not acceptable personally, and that it "was hoped that some other person would be appointed, with full powers, to settle this treaty, and graced with such a character as became the royalty to which he was accredited." Washington then nominated Thomas Pinckney, at that time minister in London, as minister plenipotentiary in Spain. When Pinckney arrived on the scene he was met with the dilatory methods then characteristic of Spanish diplomacy, and finally he had to bring matters to an issue by demanding his passports. His determination so impressed the Spanish Government that it finally consented to a treaty, October 27, 1795, which fixed the southern boundary of the United States and opened the Mississippi River to navigation. The boundary line was to run east along the thirty-first parallel of latitude from the Mississippi to the Appalachicola, thence along the latter river to its junction with the Flint, thence to the headwaters of the St. Mary's, and along its course to the Atlantic Ocean. The free navigation of the Mississippi was coupled with the privilege of depositing merchandise at New Orleans "without paying any other duty than a fair price for the hire of the stores." This privilege was to be continued after three years, or "an equivalent establishment" on the banks of the Mississippi was to be assigned to citizens of the United States — a provision which was not free from ambiguities and which furnished fresh material for controversy a few years later.

CHAPTER VII

A SETTLEMENT WITH ENGLAND

According to Jefferson, the President originally took the same view of the French treaty that he did. Jefferson relates that on April 18, 1793, Washington spoke of having "never had a doubt of the validity of the French treaty," and he notes that in the cabinet disputes Washington was inclined to his views. As the embarrassments of the Administration thickened, the President, it is true, leaned more and more toward Hamilton, but this inclination was due more to necessity than to personal partiality. The explanation stands out in Jefferson's own account of events. Hamilton was clear, positive, and decided as to what to do and how to do it. Jefferson was active in finding objections but not in finding ways and means of action. This contrast became sharper as time went on, and, as Washington was in a position where he had to do something, he was forced to rely on Hamilton more and more. Jefferson held that it would be inexpedient for the general government to assume the duty of fortifying the harbors, and that there was no constitutional authority for establishing a military academy. On November 28, 1793, there was a prolonged wrangle over these issues at a cabinet meeting, which the President ended by saying that he would recommend the military academy to Congress, and "let them decide for themselves whether the Constitution authorized it or not." This was the last of the quarrelsome cabinet sessions recorded by Jefferson. He vacated the office of Secretary of State, December 31, 1793, and thereafter the ascendancy of Hamilton in the Cabinet was indisputed.

An immediate effect of the change was to give new vigor to efforts at reaching a settlement with Great Britain. The old troubles over her retention of the western posts still continued, and in addition to them came new difficulties arising from war measures. On January 30, 1793, Thomas Pinckney, then American minister to Great Britain, wrote that war was about to begin, "and although our claim to a free intercourse is founded in reason and our national right, yet, as we have no armed neutrality the members whereof this people have to fear, they may stop our vessels bound to French ports with provisions." What was feared soon happened. By the French decree of 1793, the French colonies were opened to American trade and West Indian commerce flourished. This was now afflicted by contraband regulations laid down by Great Britain, under which many American vessels were seized for carrying cargoes to or from French ports. Although Genet's activities and the extent to which they were indulged by the United States did not tend to promote friendly relations with Great Britain, yet it does not appear that the British policy was inspired by resentment. The regulations as defined by instructions issued on June 8, 1793, made liable to detention all vessels carrying "corn, flour, or meal" to French ports, with the proviso that the cargoes might be purchased on behalf of the British government and the ships might then be released with a due allowance for freight, or they might be allowed to dispose of their cargoes in the ports of any country in amity with Great Britain. Vessels attempting to enter a blockaded port were liable to seizure and condemnation, save that the ships of Denmark and Sweden might be seized only if they should persist in trying to enter after once having been turned back.

Conciliatory explanations were made by Hammond, the British minister, in notifying our State Department. He pointed out that only corn and flour were contraband, that the regulations did not extend to other provisions, and that they secured "to the proprietors, supposing them neutral, a full indemnification for any loss they may possibly sustain." The special privilege extended to Denmark and Sweden was attributed to treaty requirements and therefore could not be regarded as invidious. In reply Jefferson at home and Pinckney abroad argued in behalf of the United States for the principle that free ships make free goods, but Great Britain would not hearken to a doctrine that struck at the efficacy of her sea power.

Washington besought Congress to support the efforts of the Administration by making, for the defense of American interests, such provision as would inspire respect. In his address of December 3, 1793, he observed: "There is a rank due to the United States among nations which will be withheld, if not absolutely lost, by the reputation of weakness. If we desire to avoid insult, we must be able to repel it; if we desire to secure peace, one of the most powerful instruments of our rising prosperity, it must be known that we are at all times ready for war." The answer of Congress was the grudging consent to some naval preparations already recounted.

After the passage of the navy bill Sedgwick of Massachusetts endeavored to interest the House in the general subject of military preparation. On March 12, 1794, he introduced resolutions for raising fifteen additional regiments for two years, the term to be extended for three years in case of the outbreak of war. In advocating this measure he spoke of the sorry experience of the country in depending upon militia. Their "want of discipline occasions them to commit a great waste on the property of their fellow citizens, besides a waste of public property." As long as we depend upon militia, "European nations will not consider us as able to retaliate and assert our rights." Nothing came of this sensible proposal, but Sedgwick made an auxiliary suggestion which Congress did adopt. He urged that the sailing of vessels from the ports of the United States be prohibited. An embargo would hold over foreign nations the threat that, unless they behaved themselves, their supplies from the United States might be cut off. Such embargo was voted for a month from March 26, 1794, which was subsequently extended for another month, and the President was authorized to lay, regulate, and revoke embargoes during the recess of Congress. Congress regarded the embargo policy as a cheap way out of a difficult situation, but this method was really not only far more costly to the nation than would have been the straightforward course of arming for defense, but at the same time accomplished nothing. Dayton of New Jersey proposed to supplement the embargo by the sequestration of all debts due from citizens of the United States to British subjects. Clark of New Jersey outdid his colleague by proposing to prohibit all commercial intercourse between the United States and Great Britain until such time as that country should surrender the western posts and should make restitution for all losses sustained by American citizens.

Violent speeches were made on these proposals at the very time when the House was refusing to support either an army or a navy. Sedgwick introduced some good sense into a debate that was alternating between blatant vaporing and legal pedantry, by pointing out that, under the Constitution, the President of the United States ought to be allowed to have some say about the matter. It was the function of the President to treat with foreign powers, and yet the House was now considering action which was in effect "prescribing the terms of treaty, and restraining the constitutional power from treating on any other terms." This argument was used effectively by a number of speakers. It turned the main position taken by the advocates of non-intercourse, which was that the real objection came from the bondholders who feared that the ensuing loss of revenue might prevent them from getting their interest. Such imputations of sordid motive became fruitless when the issue was raised of the constitutional authority of the President, but the advocates of non-intercourse met this new point of view by pointing out that the Constitution gave Congress the right to regulate commerce. The feeling against Great Britain was so great that the House was bent on indulging it, and on April 25, 1794, the non-intercourse bill was passed by a vote of 58 to 34. The Senate was so evenly divided that, on the motion to pass the bill to its third reading, there was a tie vote, and Vice-President Adams, who was called upon for a casting vote, gave it against the bill. About a month later in the House another attempt was made to carry the policy of non-intercourse by a joint resolution, but by this time a reaction in favor of the Administration had set in and the resolution received only 24 yeas to 46 nays, James Madison being among those who stuck to the proposal to the last.

While the House was abandoning itself to reckless mischief-making, Washington was striving to arrange matters by negotiation. The perplexities of his situation were great and varied. As a military man he knew that American jurisdiction was precarious so long as Great Britain held the interior. The matter had been the subject of prolix correspondence between Jefferson and Hammond, but the American demands that Great Britain should surrender the frontier posts in accordance with the treaty of peace had been met by demands that America, in accordance with that same treaty, should first satisfy various claims of British subjects for restitution, indemnity, and relief. The regular diplomatic machinery stuck fast at this point, both at home and abroad. In one of his gossipy, confidential letters Fisher Ames remarked that Hammond was a most "petulant, impudent" man, habitually railing against the conduct of our government "with a gabble that his feelings render doubly unintelligible." But Pinckney, our representative in England, was equally undiplomatic. He was "sour and also Gallican"; although calm in manner, "he had prejudices, and unless a man has a mind above them, he can do little service there."

Washington decided that it would be wise to send a special envoy to deal with all the points at issue. He thought first of Hamilton, but was warned that the Senate would not ratify such an appointment. Hamilton recommended John Jay as "the only man in whose qualifications for success there would be thorough confidence." Jay was then chief-justice, but the crisis was so dangerous as to justify Washington in calling him even from that important post. He had matchless qualifications for the mission. He had been minister to Spain, 1778–1782; he had been one of the commissioners who had negotiated the treaty of peace of 1783; he had been Secretary of Foreign Affairs, 1784–1789; so that he had had an experience which familiarized him with every detail of the questions at issue. As a negotiator he had always gained marked success by acting upon his own principle that "a little good-natured wisdom often does more in politics than much slippery craft." Jay showed fine patriotism in accepting the appointment. He remarked to his friends that no man could frame a treaty with Great Britain without making himself unpopular and odious, and he accepted the mission under "a conviction that to refuse it would be to desert my duty for the sake of my ease and domestic concerns and comforts."

Jay was nominated as envoy extraordinary on April 16, 1794, and, after three days of violent debate, the appointment was confirmed by the Senate. The event did not moderate the rage of the House for immediate action. Some members urged that it was indelicate for the House to be passing reprisals at a time when the Executive was attempting friendly negotiations; but the reply was made that, if there was any indelicacy, it was on the part of the Executive, inasmuch as the House proceedings had been already begun when the President decided to nominate an envoy extraordinary. While Congress was fuming and wrangling, Jay was proceeding with his difficult task. He sailed on May 12, and on June 8 landed in England where he was hospitably received. Despite these personal attentions, the differences to be adjusted were so numerous and complicated that on the surface the situation looked almost hopeless. Conditions, however, were really more favorable than they appeared to be. A change, latent but influential, had taken place in the mental attitude of the governing class in England. There had been a notion that American independence would not last long and that the country would eventually be restored to the British Crown. The drift of events was rather in that direction until Hamilton's measures gave the ascendancy to the forces making for American national development. The practical statesmanship of Great Britain perhaps saw more clearly the significance of what was taking place than did that of America itself, and it was prepared to reckon with this new condition. Moreover, the European commotion resulting from the French Revolution had brought to the front a new set of interests and anxieties, for the free handling of which a settlement of differences with the United States might be advantageous. The effect of such considerations was at least to render the situation more manageable than might have been expected, and Jay improved his opportunities with admirable tact.

In pursuance of his principle of bringing "good-natured wisdom" to bear, Jay suggested to Lord Grenville, the British Secretary for Foreign Affairs, that they should dispense with written communications, and merely meet and converse informally "until there should appear a probability of coming to some amicable mutual understanding." Even after such understanding should be put into writing, it was not to be regarded as official or binding, but simply as an exchange of private memoranda. So strictly was this informal method adhered to that the regular force of secretaries and copyists had nothing to do with the proceedings until the treaty was almost ready for signing. Jay had been instructed to demand compensation for some three thousand slaves who had followed the British troops when they departed, but Lord Grenville stood firm on the principle that the slave, once under the British flag, became a free man, the property rights of the former owner thereupon becoming extinct and not forming a subject for compensation. Jay, who really held the same opinion, had to yield the point. It was agreed that the western posts should be evacuated by June 1, 1796, an arrangement which would allow the British government to retain them about two years longer. That government had already justified its retention of these posts by averring that the United States had not complied with the articles of the peace treaty relating to British debts. Jay was not in a position to argue the point with any force, for when he was Secretary of Foreign Affairs he had advised Congress that these articles "have been constantly violated on our part by legislative acts, then and still existing and operating"; and that Great Britain was therefore not to blame for retaining the posts. The British government was undoubtedly cognizant of this report, and Jay could not make any effective opposition to a proviso which in effect said to the United States, "before surrendering the posts we will wait and see whether you intend to fulfill your agreements." The root of the trouble — an evil often felt and still experienced in the United States — was defective sovereignty, an inability of the whole to control the behavior of its parts. Jay could not deny that the peace treaty had been violated by state legislation, and only by the humiliating means of an avowal of its impotence could he exonerate the national government from the imputation of bad faith. The matter was disposed of by provision for a joint commission to decide upon all cases in which it was alleged that unlawful impediments had been placed in the way of collection of debts due British subjects, and by the United States undertaking payment of the awards. A similar commission was to pass upon American claims for British violation of neutral rights. This arrangement was a concession whose practical value was eventually shown by the fact that as a result American merchants received some millions of dollars.

Jay displayed marked adroitness as a negotiator in dealing with the issues growing out of past differences, but he made an extraordinary slip in providing for commercial relations between the two countries. In their general tenor the articles displayed broad liberality. Between all British dominions in Europe and the territories of the United States there was to be "a reciprocal and perfect liberty of commerce and navigation." American vessels were to "be admitted and hospitably received" in the ports of East India, and, although participation in the coasting trade was prohibited, it was provided that this restriction should not prevent ships going from one port of discharge to another. The East Indian trade was not, however, so important as the nearer West Indian trade, and with respect to the latter the treaty provisions were narrow and exacting. American vessels were limited to seventy tons burden, and it was provided that "the United States will prohibit and restrain the carrying away of molasses, sugar, coffee, or cotton in American vessels, either for his Majesty's Islands or the United States, to any part of the world except the United States, reasonable sea-stores excepted." Jay, in a letter to Washington, excused his acceptance of this restraint on the ground that "the commercial part of the treaty may be terminated at the expiration of two years after the war, and in the meantime a state of things more auspicious to negotiation will probably arise, especially if the next session of Congress should not interpose fresh obstacles."

The treaty was silent on the subject of impressment, but Jay's failure on that point was just what was to have been expected in view of the unwillingness of the United States to defend its commerce. Impressment was not abandoned until many years afterwards, and then not through treaty stipulation but because the United States had a navy and could resist aggression on the seas. In its treatment of the subject of contraband, the treaty took positions in accord with the international law then received, but in one respect it made a distinct advance. Provision was made that war between the two countries should never become the pretext for confiscation of debts or annulment of contracts. This position involves the noble principle that war should never supersede justice but should be the servant of justice. Great practical advantage was experienced from it in the War of 1812, when the United States was a creditor nation.

On the whole, Jay's diplomacy was as enlightened as it was shrewd, but at the time it exposed him to furious denunciation which he disdained to notice. "I had read the history of Greece," he wrote to a friend, "and was apprised of the politics and proceedings of more recent date." The philosophic composure which he drew from his knowledge of history enabled him to behave with calm dignity while he was being burned in effigy, and while mob orators were heaping insult and calumny on his name. After a struggle that shook the Government, the treaty was ratified by the Senate on June 24, 1795, with the exception of the article about the West Indian trade, an omission to which Great Britain made no objection. The treaty was extremely unpopular, chiefly because unreasonable expectations of its provisions had been entertained. People had yet to learn that national independence has its defects as well as its advantages, and that the traditional intimacy between the West Indies and America was now on a footing of privilege and not of right. The great benefits conferred by the treaty were therefore not appreciated, and so violent was the fury its terms excited that it was perhaps fortunate that Jay did not resume his seat on the Supreme Bench. Before his return from England and before the details of the treaty had been made public, he had been elected governor of New York, and to accept this office he resigned the chief-justiceship.

CHAPTER VIII

PARTY VIOLENCE

WHEN, in July, 1793, Jefferson notified the President of his wish to resign from the Cabinet, Hamilton's resignation had already been before the President for several weeks. Ever since the removal of Congress to Philadelphia, Hamilton's circumstances had become less and less able to endure the strain of maintaining his official position on a salary of $3500 a year. He had fully experienced the truth of the warnings he had received that, if he gave himself to the public service, he might spend his time and substance without receiving gratitude for his efforts or credit for his motives. His vocation for statesmanship, however, was too genuine and his courage too high for such results to dishearten him. He had now accomplished what he had set out to do in securing the adoption of the measures which established the new government, and he no longer regarded his administrative position as essential to the success of his policy. Meanwhile the need had become urgent that he should resume the practice of his profession to provide for his family. It was not in his nature, however, to leave the front when a battle was coming on, and, although he gave early notice of his intention so that Washington should have ample time to look about for his successor, the resignation was not to become effective until Congress had met and shown its temper. According to Jefferson, Washington once remarked to him that he supposed Hamilton "had fixed on the latter part of next session to give an opportunity to Congress to examine into his conduct." Although Hamilton had made up his mind to retire, he intended to march out with flying colors, as became the victor on a hard-fought field. So far, he had met and beaten all enemies who had dared to assail his honor; he meant to beat them again if they renewed the attack, and he had word that one encounter was coming more formidable than any before.

Hamilton's success in carrying his measures through Congress, by sheer dexterity of management when numbers were against him, added intense bitterness to the natural chagrin felt by the defeated faction. Men like Jefferson and Madison were subject to traditions of behavior that required them to maintain a certain style of public decorum no matter how they might rage in private. But new men with new manners were coming on the scene, and among them the opposition to Hamilton had found a new leader — William Branch Giles of Virginia. He was a Princeton graduate of the class of 1781, had studied for the bar, and had been admitted to practice in 1786. To the full legal equipment of the period he added an energy and an audacity that speedily brought him legal and political distinction. He was active and outspoken in advocating the adoption of the new Constitution, at a time when popular sentiment in Virginia was strongly inclined to be adverse. He had no hesitation about undertaking unpopular causes, and hence British debt cases became a marked feature of his practice. Virginia State law had suspended the recovery of debts due British subjects until reparation had been made for the loss of negro slaves taken away by the British during the war, and until the western posts had been surrendered. But the peace treaty of 1783 stipulated that creditors on neither side should meet with lawful impediment in the recovery of debts, and by the new Constitution treaties had become part of the law of the land. On the basis of a national jurisdiction in conflict with the Virginia statutes, Giles acted so energetically, that he himself related that by 1792 he had been employed in at least one hundred British debt cases, and was "as successful in collecting monies under judgments as is usually the case with citizens."

Comprehension of the true nature of the struggle in which Giles became conspicuous must start with the fact that the Constitution was reluctantly accepted and with great uneasiness as to possible consequences. In the Virginia convention of 1788, it was declared that the new Constitution was essentially a scheme of the military men to subject the people to their rule. This argument was not so much met as avoided by the declaration that there could be no tyranny while Washington lived. The rejoinder was obvious: what if he should not be able to withstand military influence? What if, in spite of him, the government should be given a dangerous character that would develop after he passed away? Jefferson had felt misgivings on this score from the first, and Madison experienced them as soon as differences on practical measures arose between himself and Hamilton. Jefferson and Madison wanted the government to be made respectable but not strong. Hamilton saw what they could not see — and indeed what few at that time could see — that a government cannot be made respectable without being made strong.

Washington was probably without any clear views of his own on constitutional questions, and what evidence there is on this point supports Jefferson's claim that Washington was more disposed to confide in him and in Madison than in Hamilton. When Jefferson relinquished the State Department, Washington proposed to give Madison the post, but was told he would not think of taking it. Washington then transferred Randolph to the position because he could not get anybody else of suitable capacity. Whatever Washington's personal inclinations may have been, he was in a position in which he had to act. Hamilton was the only one whom he could find to show him the way, and thus circumstances more and more compelled Washington to accept Hamilton's guidance, while at the same time it seemed increasingly clear to the opposition that it was above all things necessary to crush Hamilton. This state of sentiment must be kept in mind in order to make intelligible the rabid violence of the party warfare which had long been going on against Hamilton, and which — now that Jefferson had left the Cabinet — was soon to be extended to Washington himself.

When Giles went to the front in this war, both Jefferson and Madison were busy behind the firing line supplying munitions. Giles was elected in 1790 to fill a vacancy caused by the death of Theodorick Bland, and took his seat in the third session of the First Congress. The assumption bill had been passed, but that was only the first of the series of financial measures proposed by Hamilton, and Giles followed Madison's lead in unsuccessful resistance to the excise and to the national bank. Giles was re-elected to the Second Congress, which opened on October 24, 1791. In the course of this session he became the leader of the opposition, not by supplanting Madison but through willingness to take responsibilities from which Madison, like Jefferson, shrank, because he, too, preferred activity behind the scenes. This situation has often occurred in parliamentary history — a zealous party champion scouting the scruples and restraints that hampered the official leadership, and assuming an independent line of attack with the covert favor and assistance of that leadership. In the effort to crush Hamilton a series of raids was led by Giles, whose appetite for fighting could never be extinguished no matter how severe might be his defeat.

After much preliminary skirmishing which put heavy tasks on Hamilton in the way of getting up reports and documents, a grand attack was made on January 23, 1793. A series of resolutions, in drafting which Madison and Jefferson took part, was presented, calling for minute particulars of all loans, names of all persons to whom payments had been made, statements of semi-monthly balances between the Treasury and the Bank, and an account of the sinking fund and of unexpended appropriations, — all from the beginning of the government until the end of 1792. The resolution required Hamilton to complete and state all the accounts of the Treasury Department up to a period only a little over three weeks before the resolutions were presented, and to give a detailed transcript of particulars. But the Treasury accounts were in such perfect order, and so great was Hamilton's capacity for work, that the information called for was promptly transmitted in reports dated February 4, February 13, and February 14. At the same time Hamilton hit back by observing that the resolutions "were not moved without a pretty copious display of the reasons on which they were founded," which "were of a nature to excite attention, to beget alarm, to inspire doubts."

Giles was soon able to renew the attack. Jefferson and Madison helped him to prepare a series of nine resolutions which were presented on February 27. They specifically charged Hamilton with violation of law, neglect of duty, transgression of the proper limits of his authority, and indecorum in his attitude towards the House. The series ended with a resolution that a copy should be transmitted to the President. The proceeding was a sort of impeachment, framed with the purpose not of bringing Hamilton to trial but of forcing him out of the Cabinet. The charges against him were purely technical and were actuated by malevolence. Hamilton, though not allowed to come into the House to defend himself, nevertheless participated in the debate indirectly by writing the speech delivered by William Smith and credited to him in the Annals of Congress. It was so generally felt in Congress that the resolutions were founded on nothing more substantial than spite that Giles could not hold his forces together, and as the debate proceeded the number of his adherents dwindled. The House began voting at a night session on March 1st. After the third resolution had been defeated by a vote of 40 to 12, an attempt was made to withdraw the others, but such action was refused, and one by one the remaining resolutions were defeated by increasing numbers until only seven voted with Giles at the last, among them James Madison. It was a signal triumph for Hamilton. But his enemies were not disposed to accept the decision as final, and Jefferson thought it might be revised at the next session.

It was not until the Second Congress that the old factions finally disappeared and the formation of national parties began. The issue over the adoption of the Constitution had produced Federalists and Anti-Federalists, but with its adoption Anti-Federalism as such became a thing of the past. Opposition to the Government had to betake itself to the political platform provided by the successful introduction of the new system of government, and was obliged to distinguish itself from official Federalism by attacking not the Constitution but the way in which the Constitution was being construed and applied. The suspicion, jealousy, and dislike with which the new government was regarded in many quarters were reflected from the beginning in the behavior of Congress. There was from the first a disposition to find fault and to antagonize, and as time went on this disposition was aggravated by the great scope allowed to misunderstanding and calumny from the lack of direct contact between Congress and the Administration. In founding a new party, Jefferson only organized forces that were demanding leadership. He consolidated the existing opposition, and gave it the name "Republican Party," implying that its purpose was to resist the rise of monarchy and the growth of royal prerogative in the system of government which was introduced by the adoption of the Constitution. It is clear enough now that the implication was mere calumny; the notion that Washington was either aiming at monarchy or was conniving at it through ignorance was a grotesque travesty of the shameful situation that actually existed; but fictions, pretenses, slanders, and calumnies that would never have been allowed utterance if the Administration and Congress had stood face to face now had opportunity to spread and infect public opinion. Hence the tone of extreme rage that dishonors the political contention of the period and the malice that stains the correspondence of the faction chiefs.

Although a distinct party opposition appeared and assumed a name during the Second Congress, it disavowed as yet any opposition to Washington and represented its actual attempts to thwart the measures of the Administration as efforts to counteract Washington's evil advisers. The old constitutional tradition that the king can do no wrong, which still lingered in American politics, tended to an analogous elevation of the presidential office above the field of party strife, while leaving the President's Cabinet advisers fully exposed to it, just as in the case of the ministers of the Crown in England. Allowance must be made for the effect of this tradition when judgment is passed on the political activities of the period. Considered with regard to present standards of political behavior, the course of Jefferson in fomenting opposition to the Administration of which he was a part wears the appearance of despicable intrigue. There was nothing mean or low about it, however, in the opinion of himself and his friends, and even his enemies would have allowed it to be within the rules of the game. Jefferson did his best to defeat in Congress measures adopted by Washington on the advice of Hamilton, and he also did his best to undermine Washington's confidence in Hamilton. In his personal dealings with Washington, Jefferson had every advantage, for he had Washington's ear and could, more readily than Hamilton, direct the currents of unconscious influence that produce the will to believe. But Jefferson's animosity kept tempting him to overplay his hand in a way that was fatal in the face of an antagonist so keen and so dexterous as Hamilton.

In a letter of May 23, 1792, Jefferson presented to Washington an elaborate indictment of Hamilton's policy as a justification of his own behavior in organizing an opposition party in Congress. He charged Hamilton with subverting the character of the Government by his financial measures, the logical consequence of which would be "a change from the present republican form of government to that of a monarchy." Hence the need for organizing "the Republican party who wish to preserve the government in its present form." Washington thought over the matter, and — according to Jefferson — reopened the subject in a personal interview on July 10. Being now fully apprised of Jefferson's case, Washington himself prepared a brief of it, divided into numbered sections, and applied to Hamilton for a statement of his ideas upon the "enumerated discontents," framed so "that those ideas may be applied to the correspondent numbers." The proceeding is a fine instance of the care which Washington exercised in forming his opinions. Of course, as soon as charges of corruption and misdemeanor were reduced to exact statement the matter was put just where Hamilton wanted to get it, and in the grasp of his powerful hands its trashy character was promptly displayed. It is needless to go into details, now that public loans, the funding of floating indebtedness in excess of current income, and the maintenance of a national banking system to supply machinery of credit, are such well recognized functions that the wonder is how any statesman could have ever thought otherwise. Jefferson's arguments, when read with the prepossessions of the present day, are so apt to leave an impression of absurdity that they constitute a troublesome episode for his biographers.

Jefferson's maneuvering utterly failed to injure Hamilton in Washington's esteem, but it did have the effect of so thoroughly disgusting Washington with public life that at one time he was determined to refuse a reëlection, and even went so far as to ask Madison to prepare a valedictory address for him. He consented to serve another term most reluctantly, and not until he had been besought to do so by the leaders on both sides. Jefferson was as urgent as was Hamilton. While Washington was still wavering, he received a strong letter from Edmund Randolph that doubtless touched his soldierly pride. The letter closed with this sharp argument:

"You suffered yourself to yield when the voice of your country summoned you to the Administration. Should a civil war arise, you cannot stay at home. And how much easier will it be to disperse the factions, which are rushing to this catastrophe, than to subdue them after they shall appear in arms? It is the fixed opinion of the world, that you surrender nothing incomplete."

An appeal of this character was the most effective that could possibly be addressed to Washington, but in consenting he grumbled over the hardship of having to keep in active service at his time of life after already having served for so long a time. He complained that his hearing was getting bad and that "perhaps his other faculties might fall off and he not be sensible of it."

Acquiescence in Washington's candidacy made it practically impossible for the Republican party to manifest its true strength. The compliment of Republican support was awarded to Governor Clinton of New York, who together with Washington received all the electoral votes of Virginia, New York, North Carolina, and Georgia. A stray electoral vote from Pennsylvania brought Clinton's total up to 50, whereas John Adams received 77 votes which re-elected him as vice-president. Jefferson received only four electoral votes, all from Kentucky, but his poor showing in this election was wholly due to the intricacy of the electoral system, and his party meanwhile developed so much strength that when the Third Congress met on December 2, 1793, the Republicans were strong enough to elect the speaker.

Undeterred by this circumstance, Hamilton forced the fighting. The Jeffersonians had been excusing the defeat they had received in attacking Hamilton in the previous Congress on the ground that the House had acted without allowing sufficient time for due examination of the evidence. This plea supplied to Hamilton an occasion for prompt action. Exactly two weeks after the meeting of Congress he addressed a letter to the

Speaker, in which he declared: "Unwilling to leave the matter on such a footing, I have concluded to request of the House of Representatives, as I now do, that a new inquiry may be, without delay, instituted in some mode, most effectual for an accurate and thorough investigation; and I will add, that the more comprehensive it is, the more agreeable it will be to me."

Giles promptly took up the challenge, and moved the appointment of a committee to examine the state of the Treasury Department in all its particulars. Pending action by the House, a new complication was introduced, which, though meant as a blow at Hamilton, resulted in a signal triumph for him. His enemies got hold of a discharged clerk of the Treasury Department by means of whom they now tried to counteract the effect of Hamilton's challenge. Two days after Hamilton's letter to the Speaker, a memorial from Andrew G. Fraunces was laid before the House making charges which amounted to this: that there was a combination between Hamilton and other officers of the Treasury Department to evade payment of warrants so that they could be bought up for speculative purposes. Hamilton's request for an investigation was allowed to lie on the table, but the memorial from Fraunces was referred to a select committee of which Giles was a member. This circumstance turned out to be much to Hamilton's advantage. Giles was an erect, bold, manly foe; he could not stomach the sort of testimony upon which depended the charges against Hamilton's personal integrity, and he concurred in a report on Hamilton finding that the evidence was "fully sufficient to justify his conduct; and that in the whole course of this transaction the Secretary and other officers of the Treasury have acted a meritorious part towards the public."

Giles, while exonerating Hamilton of the charge of dishonesty, did not desist from pressing his motion for further investigation of the Treasury Department. But he admitted that imputations upon the Secretary's integrity had been quite removed, and he now urged that "the primary object of the resolution is to ascertain the boundaries of discretion and authority between the Legislature and the Treasury Department." In thus shifting his ground he presented a new issue in which the House — and indeed Giles's own party associates — took little interest. The fact was that the attack on Hamilton had failed, that the purpose of showing him to be unworthy of

Washington's confidence had been abandoned as impracticable, and that all that remained was a proposal that the House should again engage in a laborious investigation of the desirability of attempting a new delimitation of the functions of the Treasury Department and of Congress. But this, of course, did not concern Hamilton. He had acted under existing laws and with responsibilities which were defined by them. If Congress saw fit to make new laws, the consequences would fall upon his successor in office, not upon him since he was about to retire. If Congress made fetters for the Secretary, it might even be that some member of Giles's own party would have to wear them. Thus, however Giles's latest proposal might be viewed, it was not attractive. Moreover, it was presented at a time when the House had much more urgent matters to consider. The country was wild with excitement over the retaliating orders and decrees of Great Britain and France, which subjected American interests to injury from both sides. Giles and Page appear to have been the only speakers on the resolution when it was taken up for consideration on February 24, 1794, and both disclaimed any intention of reflecting upon Hamilton. The resolution received decent interment by reference to a committee, with no one objecting. The practical conclusion of the matter was that Hamilton had beaten his enemies once more and beaten them thoroughly.

Before resigning his office, Hamilton added still another great achievement to his record of illustrious service in establishing public authority. The violent agitation against the excise act promoted by the Jeffersonians naturally tended to forcible resistance. One of the counts of Jefferson's indictment of Hamilton's policy which had been presented to Washington was that the excise law was "of odious character . . . committing the authority of the Government in parts where resistance is most probable and coercion least practicable." The parts thus referred to were the mountains of western Pennsylvania. The popular discontent which arose there from the imposition of taxes upon their principal staple — distilled spirits — naturally coalesced with the agitation carried on against Washington's neutrality policy. At a meeting of delegates from the election districts of Allegheny county held at Pittsburgh, resolutions were adopted attributing the policy of the Government "to the pernicious influence of stockholders." This was an echo of

Jefferson's views. But the resolutions went on to declare: " Our minds feel this with so much indignancy, that we are almost ready to wish for a state of revolution and the guillotine of France, for a short space, in order to inflict punishment on the miscreants that enervate and disgrace our Government." This was an echo of the talk in the political clubs that had been formed throughout the country. The original model was apparently the Jacobin club of Paris. The Philadelphia club with which the movement started, soon after Genet's arrival, adopted the Jacobin style of utterance. It declared its object to be the preservation of a freedom whose existence was menaced by a "European confederacy transcendent in power and unparalleled in iniquity," and also by " the pride of wealth and arrogance of power" displayed in the United States. Writing to Governor Lee of Virginia, Washington said that he considered "this insurrection as the first formidable fruit of the Democratic Societies."

Hamilton moved warily, doing whatever lay in his power to smooth the practical working of the system in the hope of "attaining the object of the laws by means short of force." But such was the inflamed state of feeling in western Pennsylvania that no course was acceptable short of abandonment by the Government of efforts to enforce the internal revenue laws. During 1793, there were several outrageous attacks on agents of the Government, and the execution of warrants for the arrest of rioters was refused by local authority. People who showed a disposition to side with the Government had their barns burned. A revenue inspector was tarred and feathered, and was run out of the district. The patience with which the Government endured insults to its authority encouraged the mob spirit. On July 16, 1794, the house of Inspector Neville was attacked by a mob, and, when he appealed to the local authorities for protection, he was notified that there was such a general combination of the people that the laws could not be executed. Neville, a revolutionary veteran of tried valor, was able to obtain the help of an officer and eleven soldiers from Fort Pitt, but the mob was too numerous and too well armed to be withstood by so weak a force. After a skirmish in which the mob fired the buildings and the place became untenable, the troops had to surrender. Soon after this affair, a convention of delegates from the four western counties of Pennsylvania was called to meet on August 14 to concert measures for united action. Organized insurrection had, in fact, begun.

"The Government," said Washington, "could no longer remain a passive spectator of the contempt with which the laws were treated." But when he called for Cabinet opinions, the old variance at once showed itself. Randolph thought that calm consideration of the situation "banishes every idea of calling the militia into immediate action." He pointed out that the disaffected region had more than fifteen thousand white males above the age of sixteen, and that sympathy with the insurgents was active in "several counties in Virginia having a strong militia." There was also the risk that the insurgents might seek British aid, in which case a severance of the Union might result. Randolph also enlarged upon the expense that would attend military operations and questioned whether the funds could be obtained. He advised a proclamation and the appointment of commissioners to treat with the insurgents. Should such means fail, and should it appear that the judiciary authority was withstood, then at last military force might be employed.

Hamilton held that "a competent force of militia should be called forth and employed to suppress the insurrection, and support the civil authority." It appeared to him that "the very existence of the Government demands this course." He urged that the force employed ought "to be an imposing one, such, if practicable, as will deter from opposition, save the effusion of the blood of the citizens, and serve the object to be accomplished." He proposed a force of twelve thousand men, of whom three thousand were to be cavalry, and he advised that, in addition to the Pennsylvania militia, New Jersey, Maryland, and Virginia should each contribute a quota.

All the members of the Cabinet except Randolph concurred in Hamilton's opinion. The practical execution of the measures was entrusted to Hamilton, who acted with great sagacity. Some appearance of timidity and inertia in Pennsylvania state authority was indirectly but effectually counteracted by measures which showed that the military expedition would move even if Pennsylvania held back. Although some troops were to gather at Carlisle, Pennsylvania, others were to meet at Cumberland Fort, Virginia. The business was so shrewdly managed that Pennsylvania state authority fell obediently into line, and the insurgents were so cowed by the determined action of the Government that they submitted without a struggle. Washington thought that this event would react upon the clubs and "effectuate their annihilation sooner than it might otherwise have happened." A general collapse among them certainly followed, and they disappeared from the political scene.

It is in the nature of precaution that the more successful it is the less necessary it appears to have been, and thus the complete success of Hamilton's management furnished his enemies with a new argument against him of which they afterwards made great use. The costly military expedition that had no fighting to do was continually held up to public ridicule. That the expense was trifling in comparison with the objects achieved must deeply impress any one who examines the records of the times. A mistake might have been fatal to the existence of the Government. It has become so powerful and massive since that time, that we can hardly realize what a rickety structure it then was, and how readily, in less capable hands, it might have collapsed.

Randolph, then Secretary of State, seems to have been in a panic. Fauchet, the French minister at that time, reported to his government that Randolph called upon him and with a griefstricken countenance declared, "It is all over; a civil war is about to ravage our unhappy country." He represented to Fauchet that there were four men whose talents, influence, and energy might save it. "But debtors of English merchants, they will be deprived of their liberty if they take the smallest step." He wanted to know whether Fauchet could lend "funds sufficient to shelter them from English persecution." Fauchet's letter was captured by the British and made public. Randolph's explanations did not clear up the obscurity that surrounds the affair. His version was that the four men were flour merchants who were being pressed by their creditors "and that the money was wanted only for the purpose of paying them what was actually due to them in virtue of existing contracts." Even on his own showing it was a shady transaction, and he retired from Washington's Cabinet under a cloud.

Washington always had difficulty about the composition of his Cabinet. A capable man had been found to succeed Randolph as Attorney-General in the person of William Bradford, an able Pennsylvania lawyer, but he died in 1795, and was succeeded by Charles Lee of Virginia. When

Knox resigned in 1794, the vacancy was filled by transferring to the War Department Timothy Pickering of Massachusetts, who had previously served as Postmaster-General. When Hamilton retired, January, 1795, he was succeeded by Oliver Wolcott of Connecticut, who had been Comptroller of the Treasury. After Randolph has been discredited by the Fauchet letter, the office of Secretary of State went a-begging. It was offered to William Paterson of New Jersey, to Thomas Johnson of Maryland, to Charles Cotesworth Pinckney of South Carolina, but all these men declined. Washington got word that Patrick Henry, the old antagonist of the Constitution, was showing Federalist leanings in opposition to Jefferson and Madison, and Henry was then tendered the appointment, but he too declined. Others were approached but all refused, and meanwhile Pickering, though Secretary of War, also attended to the work of the State Department. The matter was finally settled by permanently attaching Pickering to the State Department, while the vacancy thus created at the head of the War Department was filled by James McHenry, an appointment which Washington himself described as "Hobson's choice."

Hamilton, although out of the Cabinet, still remained a trusted adviser, and he rendered splendid service at a dangerous crisis. In spite of the fact that the Jay treaty had been ratified by the Senate in June, 1795, it was an issue in the Fall elections that year. Jefferson held that the treaty was an "execrable thing," an "infamous act, which is really nothing more than a treaty of alliance between England and the Anglo-men of this country against the Legislature and the people of the United States." Giles, who had been in close consultation with Jefferson, moved with characteristic energy to translate Jefferson's views into congressional action.

The Fourth Congress met on December 7, 1795, and although a Federalist, Jonathan Dayton of New Jersey was elected Speaker, the Republicans were strong enough to tone down the reply to the President's address by substituting for an expression of "undiminished confidence" an acknowledgment of "zealous and faithful services," which expressed "approval of his course." On March 24, 1796, the House by a vote of 62 to 37 adopted a resolution calling upon the President to lay before it his instructions to Jay, "together with the correspondence and the other documents relative to said treaty." Advised by Hamilton and sustained by his whole Cabinet, Washington replied on March 30, by declining to comply because concurrence of the House was not necessary to give validity to the treaty, and "because of the necessity of maintaining the boundaries fixed by the Constitution between the different departments." The House retorted by a resolution declaring its right to judge the merits of the case when application was made for an appropriation to give effect to a treaty. Debate on this issue, which is still an open one in our constitutional system, began on April 14 and continued for sixteen days. Madison opposed the execution of the treaty, but the principal speech was made by Giles, whose argument covers twenty-eight columns in the *Annals.* As the struggle proceeded, the Jeffersonians lost ground. It became evident that weighty elements of public opinion were veering around to the support of the treaty as the best arrangement attainable in the circumstances. The balance of strength became so close that the scales were probably turned by a speech of wonderful power and eloquence delivered by Fisher Ames. A decision was reached on April 30, the test question being on declaring the treaty "highly objectionable." Forty-eight votes were cast on each side and the Speaker gave his decision for the negative. In the end, the House stood 51 to 48 in favor of carrying the treaty into effect. Only four votes for the treaty came from the section south of Mason and Dixon's line.

During the agitation over the Jay treaty the rage of party spirit turned full against Washington himself. He was blackguarded and abused in every possible way. He was accused of having shown incapacity while General and of having embezzled public funds while President. He was nicknamed "the Step-Father of his country." The imputation on his honor stung so keenly that he declared "he would rather be in his grave than in the Presidency," and in private correspondence he complained that he had been assailed "in terms so exaggerated and indecent as could scarcely be applied to a Nero, a notorious defaulter, or even to a common pickpocket." The only rejoinder which his dignity permitted him to make is that contained in his Farewell Address, dated September 17, 1796, in which he made a modest estimate of his services and made a last affectionate appeal to the people whom he had so faithfully served.

The Farewell Address was not a communication to Congress. It was issued in view of the approaching presidential election, to give public notice that he declined "being considered among the number of those out of whom a choice is to be made." The usual address to Congress was delivered by Washington on December 7, 1796, shortly after the opening of the second session of the Fourth Congress. The occasion was connected in the public mind with his recent valedictory, and Congress was ready to vote a reply of particularly cordial tenor. Giles stood to his guns to the last, speaking and voting against complimentary resolutions. "He hoped gentlemen would compliment the President privately, as individuals; at the same time, he hoped such adulation would never pervade the House." He held that "the Administration has been neither wise nor firm," and he acknowledged that he was "one of those who do not think so much of the President as some others do." On this issue Madison forsook him, and Giles was voted down, 67 to 12. Among the eleven who stood by Giles was a new member who made his first appearance that session — Andrew Jackson of Tennessee. In later years, when Giles's opinions had been modified by experience and reflection, he regretted his attitude towards Washington. It is due to Giles to say that he did not stab in the dark. He had qualities of character that under better constitutional arrangements would have invigorated the functions of the House as an organ of control, but at that time, with the separation that had been introduced between the House and the Administration, his energy was mischievous and his intrepidity was a misfortune to himself and to his party.

Washington's term dragged to its close like so much slow torture. Others might resign, but he had to stand at his post until the end, and it was a happy day for him when he got his discharge. His elation was so manifest that it was noticed by John Adams. Writing to his wife about the ceremony the day after the inauguration, Adams remarked that Washington "seemed to me to enjoy a triumph over me. Methought I heard him say, 'Ay! I am fairly out, and you fairly in! See which of us will be the happiest.'"

CHAPTER IX

THE PERSONAL RULE OF JOHN ADAMS

The narrow majority by which John Adams was elected did not accurately reflect the existing state of party strength. The electoral college system, by its nature, was apt to distort the situation. Originally the electors voted for two persons without designating their preference for President. There was no inconvenience on that account while Washington was a candidate, since he was the first choice of all the electors; but in 1796, with Washington out of the field, both parties were in the dilemma that, if they voted solidly for two candidates, the vote of the electoral college would not determine who should be President. To avert this situation, the adherents of a presidential candidate would have to scatter votes meant to have only vice-presidential significance. This explains the wide distribution of votes that characterized the working of the system until it was changed by the Twelfth Amendment adopted in 1804.

In 1796, the electoral college gave votes to thirteen candidates. The Federalist ticket was John Adams and Thomas Pinckney of South Carolina. Hamilton urged equal support of both as the surest way to defeat Jefferson; but eighteen Adams electors in New England withheld votes from Pinckney to make sure that he should not slip in ahead of Adams. Had they not done so, Pinckney would have been chosen President, a possibility which Hamilton foresaw because of Pinckney's popularity in the South. New York, New Jersey, and Delaware voted solidly for Adams and Pinckney as Hamilton had recommended, but South Carolina voted solidly for both Jefferson and Pinckney, and moreover Pinckney received scattering votes elsewhere in the South. The action of the Adams electors in New England defeated Pinckney, and gave Jefferson the vice-presidency, the vote for the leading candidates being 71 for Adams, 68 for Jefferson, and 59 for Pinckney. The tendency of such conditions to inspire political feuds and to foster factional animosity is quite obvious. This situation must be borne in mind, in order to make intelligible the course of Adams's administration.

Adams had an inheritance of trouble from the same source which had plagued Washington's administration, — the efforts of revolutionary France to rule the United States. In selecting Monroe to succeed Morris, Washington knew that the former was as friendly to the French Revolution as Morris had been opposed to it, and hence he hoped that Monroe would be able to impart a more friendly feeling to the relations of the two countries. Monroe arrived in Paris just after the fall of Robespierre. The Committee of Public Safety then in possession of the executive authority hesitated to receive him. Monroe wrote to the President of the National Convention then sitting, and a decree was at once passed that the Minister of the United States should "be introduced in the bosom of the Convention." Monroe presented himself on August 15, 1794, and made a glowing address. He descanted upon the trials by which America had won her independence and declared that "France, our ally and friend, and who aided in the contest, has now embarked in the same noble career." The address was received with enthusiasm, the President of the Convention drew Monroe to his bosom in a fraternal embrace; and it was decreed that "the flags of the United States of America shall be joined to those of France, and displayed in the hall of the sittings of the Convention, in sign of the union and eternal fraternity of the two peoples." In compliance with this decree Monroe soon after presented an American flag to the Convention.

When the news of these proceedings reached the State Department, a sharp note was sent to Monroe "to recommend caution lest we be obliged at some time or other to explain away or disavow an excess of fervor, so as to reduce it down to the cool system of neutrality." The French Government regarded the Jay treaty as an affront and as a violation of our treaties with France. Many American vessels were seized and confiscated with their cargoes, and hundreds of American citizens were imprisoned. Washington thought that Monroe was entirely too submissive to such proceedings; therefore, on August 22, 1796, Monroe was recalled and soon after Charles Cotesworth Pinckney was appointed in his stead.

The representation of France in the United States had been as mutable as her politics. Fauchet, who succeeded Genet, retired in June, 1795, and was succeeded by Adet, who like his predecessors, carried on active interference with American politics, and even attempted to affect the presidential election by making public a note addressed to the Secretary of State complaining of the behavior of the Administration. In Adams's opinion this note had some adverse effect in Pennsylvania but no other serious consequences, since it was generally resented. Meanwhile Pinckney arrived in France in December, 1796, and the Directory refused to receive him. He was not even permitted to remain in Paris; but honors were showered upon Monroe as he took his leave. In March, 1797, Adet withdrew, and diplomatic relations between the two countries were entirely suspended. By a decree made two days before Adams took office, the Directory proclaimed as pirates, to be treated without mercy, all Americans found serving on board British vessels, and ordered the seizure of all American vessels not provided with lists of their crews in proper form. Though made under cover of the treaty of 1778, this latter provision ran counter to its spirit and purpose. Captures of American ships began at once. As Joel Barlow wrote, the decree of March 2, 1797, "was meant to be little short of a declaration of war."

The curious situation which ensued from the efforts made by Adams to deal with this emergency cannot be understood without reference to his personal peculiarities. He was vain, learned, and self-sufficient, and he had the characteristic defect of pedantry: he overrated intelligence and he underrated character. Hence he was inclined to resent Washington's eminence as being due more to fortune than to merit, and he had for Hamilton an active hatred compounded of wounded vanity and a sense of positive injury. He knew that Hamilton thought slightingly of his political capacity and had worked against his political advancement, and he was too lacking in magnanimity to do justice to Hamilton's motives. His state of mind was well known to the Republican leaders, who hoped to be able to use him. Jefferson wrote to Madison suggesting that "it would be worthy of consideration whether it would not be for the public good to come to a good understanding with him as to his future elections." Jefferson himself called on Adams and showed himself desirous of cordial relations. Mrs. Adams responded by expressions of pleasure at the success of Jefferson, between whom and her husband, she said, there had never been "any public or private animosity." Such rejoicing over the defeat of the Federalist candidate for Vice-President did not promote good feeling between the President and the Federalist leaders.

The morning before the inauguration, Adams called on Jefferson and discussed with him the policy to be pursued toward France. The idea had occurred to Adams that a good impression might be made by sending out a mission of extraordinary weight and dignity, and he wanted to know whether Jefferson himself would not be willing to head such a mission. Without checking Adams's friendly overtures, Jefferson soon brought him to agree that it would not be proper for the Vice-President to accept such a post. Adams then proposed that Madison should go. On March 6, Jefferson reported to Adams that Madison would not accept. Then for the first time, according to Adams's own account, he consulted a member of his Cabinet, supposed to be Wolcott although the name is not mentioned.

Adams took over Washington's Cabinet as it was finally constituted after the retirement of Jefferson and Hamilton and the virtual expulsion of Randolph. The process of change had made it entirely Federalist in its political complexion, and entirely devoted to Washington and Hamilton in its personal sympathies. That Adams should have adopted it as his own Cabinet has been generally regarded as a blunder, but it was a natural step for him to take. To get as capable men to accept the portfolios as those then holding them would have been difficult, so averse had prominent men become to putting themselves in a position to be harried by Congress, with no effective means of explaining and justifying their conduct. Congress then had a prestige which it does not now possess, and its utterances then received consideration not now accorded. Whenever presidential electors were voted for directly by the people, the poll was small compared with the vote for members of Congress. Moreover, there was then a feeling that the Cabinet should be regarded as a bureaucracy, and for a long period this conception tended to give remarkable permanence to its composition.

When the personal attachments of the Cabinet chiefs are considered, it is easy to imagine the dismay and consternation produced by the dealings of Adams with Jefferson. By the time Adams consulted the members of his Cabinet, they had become suspicious of his motives and distrustful of his character. Before long they were writing to Washington and Hamilton for advice, and were endeavoring to manage Adams by concerted action. In this course they had the cordial approval of leading Federalists, who would write privately to members of the Cabinet and give counsel as to procedure. Wolcott, a Federalist leader in Connecticut, warned his son, the Secretary of the Treasury, that Adams was "a man of great vanity, pretty capricious, of a very moderate share of prudence, and of far less real abilities than he believes himself to possess," so that "it will require a deal of address to render him the service which it will be essential for him to receive."

The policy to be pursued was still unsettled when news came of the insulting rejection of Pinckney and the domineering attitude assumed by France. On March 25, Adams issued a call for the meeting of Congress on May 15, and then set about getting the advice of his Cabinet. He presented a schedule of interrogatories to which he asked written answers. The attitude of the Cabinet was at first hostile to Adams's favorite notion of a special mission, but as Hamilton counseled deference to the President's views, the Cabinet finally approved the project. Adams appointed John Marshall of Virginia and Elbridge Gerry of Massachusetts to serve in conjunction with Pinckney, who had taken refuge in Holland.

Strong support for the Government in taking a firm stand against France was manifested in both Houses of Congress. Hamilton aided Secretary Wolcott in preparing a scheme of taxation by which the revenue could be increased to provide for national defense. With the singular fatality that characterized Federalist party behavior throughout Adams's Administration, however, all the items proposed were abandoned except one for stamp taxes. What had been offered as a scheme whose particulars were justifiable by their relation to the whole was converted into a measure which was traditionally obnoxious in itself, and was now made freshly odious by an appearance of discrimination and partiality. The Federalists did improve their opportunity in the way of general legislation: much needed laws were passed to stop privateering, to protect the ports, and to increase the naval armament; and Adams was placed in a much better position to maintain neutrality than Washington had been. Fear of another outbreak of yellow fever accelerated the work of Congress, and the extra session lasted only a little over three weeks.

Such was the slowness of communication in those days that, when Congress reassembled at the regular session in November, no decisive news had arrived of the fate of the special mission. Adams with proper prudence thought it would be wise to consider what should be done in case of failure. On January 24, 1798, he addressed to the members of his Cabinet a letter requesting their views. No record is preserved of the replies of the Secretaries of State and of the Treasury. Lee, the Attorney-General, recommended a declaration of war. McHenry, the Secretary of War, offered a series of seven propositions to be recommended to Congress: 1. Permission to merchant ships to arm; 2. The construction of twenty sloops of war; 3. The completion of frigates already authorized; 4. Grant to the President of authority to provide ships of the line, not exceeding ten, "by such means as he may judge best." 5. Suspension of the treaties with France; 6. An army of sixteen thousand men, with provision for twenty thousand more should occasion demand; 7. A loan and an adequate system of taxation.

These recommendations are substantially identical with those made by Hamilton in a letter to Pickering, and the presumption is strong that McHenry's paper is a product of Hamilton's influence, and that it had the concurrence of Pickering and Wolcott. The suggestion that the President should be given discretionary authority in the matter of procuring ships of the line contemplated the possibility of obtaining them by transfer from England, not through formal alliance but as an incident of a coöperation to be arranged by negotiation, whose objects would also include aid in placing a loan and permission for American ships to join British convoys. This feature of McHenry's recommendations could not be carried out. Pickering soon informed Hamilton that the old animosities were still so active "in some breasts" that the plan of coöperation was impracticable.

Meanwhile the composite mission had accomplished nothing except to make clear the actual character of French policy. When the envoys arrived in France, the Directory had found in Napoleon Bonaparte an instrument of power that was stunning Europe by its tremendous blows. That instrument had not yet turned to the reorganization of France herself, and at the time it served the rapacious designs of the Directory. Europe was looted wherever the arms of France prevailed, and the levying of tribute both on public and on private account was the order of the day. Talleyrand was the Minister of Foreign Affairs, and he treated the envoys with a mixture of menace and cajolery. It was a part of his tactics to sever the Republican member, Gerry, from his Federalist colleagues. Gerry was weak enough to be caught by Talleyrand's snare, and he was foolish enough to attribute the remonstrances of his colleagues to vanity. "They were wounded," he wrote, "by the manner in which they had been treated by the Government of France, and the difference which had been used in respect to me." Gerry's conduct served to weaken and delay the negotiations, but he eventually united with his colleagues in a detailed report to the State Department, which was transmitted to Congress by the President on April 3, 1798. In the original the names of the French officials concerned were written at full length in the Department cipher. In making a copy for Congress, Secretary Pickering substituted for the names the terminal letters of the alphabet, and hence the report has passed into history as the X. Y. Z. dispatches.

The story, in brief, was that on arriving in Paris the envoys called on Talleyrand, who said that he was busy at that very time on a report to the Directory on American affairs, and in a few days would let them know how matters stood. A few days later they received notice through Talleyrand's secretary that the Directory was greatly exasperated by expressions used in President Adams's address to Congress, that the envoys would probably not be received until further conference, and that persons might be appointed to treat with them. A few more days elapsed, and then three persons presented themselves as coming from Talleyrand. They were Hottinguer, Bellamy, and Hauteval, designated as X. Y. Z. in the communication to Congress. They said that a friendly reception by the Directory could not be obtained unless the United States would assist France by a loan, and that "a sum of money was required for the pocket of the Directory and Ministers, which would be at the disposal of M. Talleyrand." This "douceur to the Directory," amounting to approximately $240,000, was urged with great persistence as an indispensable condition of friendly relations. The envoys temporized and pointed out that their Government would have to be consulted on the matter of the loan. The wariness of the envoys made Talleyrand's agents the more insistent about getting the "douceur." At one of the interviews Hottinguer exclaimed:—

"Gentlemen, you do not speak to the point; it is money; it is expected that you will offer money." The envoys replied that on this point their answer had already been given. "'No,' said he, 'you have not: what is your answer?' We replied, 'It is no; no; not a sixpence.'" This part of the envoys' report soon received legendary embellishment, and in innumerable stump speeches it rang out as, "Not one cent for tribute; millions for defense!"

The publication of the X. Y. Z. dispatches sent rolling through the country a wave of patriotic feeling before which the Republican leaders quailed and which swept away many of their followers. Jefferson held that the French Government ought not to be held responsible for "the turpitude of swindlers," and he steadfastly opposed any action looking to the use of force to maintain American rights. Some of the Republican members of Congress, however, went over to the Federalist side, and Jefferson's party was presently reduced to a feeble and dispirited minority. Loyal addresses rained upon Adams. There appeared a new national song, *Hail Columbia*, which was sung all over the land and which was established in lasting popularity. Among its well-known lines is an exulting stanza beginning:

"Behold the chief who now commands,
Once more to serve his country stands."

This is an allusion to the fact that Washington had left his retirement to take charge of the national forces. The envoys had been threatened that, unless they submitted to the French demands, the American Republic might share the fate of the Republic of Venice. The response of Congress was to vote money to complete the frigates, the *United States*, the *Constitution*, and the *Constellation*, work on which had been suspended when the Algerine troubles subsided; and further, to authorize the construction or purchase of twelve additional vessels. For the management of this force, the Navy Department was created by the Act of April 30, 1798. By an Act of May 28, the President was authorized to raise a military force of ten thousand men, the commander of which should have the services of "a suitable number of major-generals." On July 7, the treaties with France that had so long vexed the United States were abrogated.

The operations of the Navy Department soon showed that American sailors were quite able and willing to defend the nation if they were allowed the opportunity. In December, 1798, the Navy

Department worked out a plan of operations in the enemy's waters. To repress the depredations of the French privateers in the West Indies, a squadron commanded by Captain John Barry was sent to cruise to the windward of St. Kitts as far south as Barbados, and it made numerous captures. A squadron under Captain Thomas Truxtun cruised in the vicinity of Porto Rico. The flagship was the frigate *Constellation*, which on February 9, 1799, encountered the French frigate, *L'Insurgente*, and made it strike its flag after an action lasting only an hour and seventeen minutes. The French captain fought well, but he was put at a disadvantage by losing his topmast at the opening of the engagement, so that Captain Truxtun was able to take a raking position. The American loss was only one killed and three wounded, while *L'Insurgente* had twenty-nine killed and forty-one wounded. On February 1, 1800, the *Constellation* fought the heavy French frigate *Vengeance* from about eight o'clock in the evening until after midnight, when the *Vengeance* lay completely silenced and apparently helpless. But the rigging and spars of the *Constellation* had been so badly cut up that the mainmast fell, and before the wreck could be cleared away the *Vengeance* was able to make her escape. During the two years and a half in which hostilities continued, the little navy of the United States captured eighty-five armed French vessels, nearly all privateers. Only one American war vessel was taken by the enemy, and that one had been originally a captured French vessel. The value of the protection thus extended to American trade is attested by the increase of exports from $57,000,000 in 1797 to $78,665,528 in 1799. Revenue from imports increased from $6,000,000 in 1797 to $9,080,932 in 1800.

The creation of an army, however, was attended by personal disagreements that eventually wrecked the Administration. Without waiting to hear from Washington as to his views, Adams nominated him for the command and then tried to overrule his arrangements. The notion that Washington could be hustled into a false position was a strange blunder to be made by anyone who knew him. He set forth his views and made his stipulations with his customary precision, in letters to Secretary McHenry, who had been instructed by Adams to obtain Washington's advice as to the list of officers. Washington recommended as major-generals, Hamilton, C. C. Pinckney, and Knox, in that order of rank. Adams made some demur to the preference shown for Hamilton, but McHenry showed him Washington's letter and argued the matter so persistently that Adams finally sent the nominations to the Senate in the same order as Washington had requested. Confirmation promptly followed, and a few days later Adams departed for his home at Quincy, Massachusetts, without notice to his Cabinet. It soon appeared that he was in the sulks. When McHenry wrote to him about proceeding with the organization of the army, he replied that he was willing provided Knox's precedence was acknowledged, and he added that the five New England States would not patiently submit to the humiliation of having Knox's claim disregarded.

From August 4 to October 13, wrangling over this matter went on. The members of the Cabinet were in a difficult position. It was their understanding that Washington's stipulations had been accepted, but the President now proposed a different arrangement. Pickering and McHenry wrote to Washington explaining the situation in detail. News of the differences between Adams and Washington of course soon got about and caused a great buzz in political circles. Adams became angry over the opposition he was meeting, and on

August 29 he wrote to McHenry that "there has been too much intrigue in this business, both with General Washington and with me"; that it might as well be understood that in any event he would have the last say, "and I shall then determine it exactly as I should now, Knox, Pinckney, and Hamilton." Washington stood firm and, on September 25, wrote to the President demanding "that he might know at once and precisely what he had to expect." In reply Adams said that he had signed the three commissions on the same day in the hope "that an amicable adjustment or acquiescence might take place among the gentlemen themselves." But should this hope be disappointed, "and controversies shall arise, they will of course be submitted to you as commander-in-chief."

Adams, of course, knew quite well that such matters did not settle themselves, but he seems to have imagined that all he had to do was to sit tight and that matters would have to come his way. The tricky and shuffling behavior to which he descended would be unbelievable of a man of his standing were there not an authentic record made by himself. The suspense finally became so intolerable that the Cabinet acted without consulting the President any longer on the point. The Secretary of War submitted to his colleagues all the correspondence in the case and asked their advice. The Secretaries of State, of the Treasury, and of the Navy made a joint reply declaring "the only inference which we can draw from the facts before stated, is, that the President consents to the arrangement of rank as proposed by General Washington," and that therefore "the Secretary of War ought to transmit the commissions, and inform the generals that in his opinion the rank is definitely settled according to the original arrangement." This was done; but Knox declined an appointment ranking him below Hamilton and Pinckney. Thus, Adams despite his obstinacy, was completely baffled, and a bitter feud between him and his Cabinet was added to the causes now at work to destroy the Federalist party.

The Federalist military measures were sound and judicious, and the expense, although a subject of bitter denunciation, was really trivial in comparison with the national value of the enhanced respect and consideration obtained for American interests. But these measures were followed by imprudent acts for regulating domestic politics. By the Act of June 18, 1798, the period of residence required before an alien could be admitted to

American citizenship was raised from five years to fourteen. By the Act of June 25, 1798, the efficacy of which was limited to two years, the President might send out of the country "such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof." The state of public opinion might then have sanctioned these measures had they stood alone, but they were connected with another which proved to be the weight that pulled them all down. By the Act of July 14, 1798, it was made a crime to write or publish "any false, scandalous, and malicious" statements about the President or either House of Congress, to bring them "into contempt or disrepute," or to "stir up sedition within the United States."

There were plenty of precedents in English history for legislation of such character. Robust examples of it were supplied in England at that very time. There were also strong colonial precedents. According to Secretary Wolcott, the sedition law was "merely a copy from a statute of Virginia in October, 1776." But a revolutionary Whig measure aimed at Tories was a very different thing in its practical aspect from the same measure used by a national party against a constitutional opposition. Hamilton regarded such legislation as impolitic, and, on hearing of the sedition bill, he wrote a protesting letter, saying, "Let us not establish tyranny. Energy is a very different thing from violence."

But in general the Federalist leaders were so carried away by the excitement of the times that they could not practice moderation. Their zealotry was sustained by political theories which made no distinction between partisanship and sedition. The constitutional function of partisanship was discerned and stated by Burke in 1770, but his definition of it, as a joint endeavor to promote the national interest upon some particular principle, was scouted at the time and was not allowed until long after. The prevailing idea in Washington's time, both in England and America, was that partisanship was inherently pernicious and ought to be suppressed. Washington's *Farewell Address* warned the people "in the most solemn manner against the baneful effects of the spirit of party." The idea then was that government was wholly the affair of constituted authority, and that it was improper for political activity to surpass the appointed bounds. Newspaper criticism and partisan oratory were among the things in Washington's mind when he censured all attempts "to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities." Hence judges thought it within their province to denounce political agitators when charging a grand jury. Chief Justice Ellsworth, in a charge delivered in Massachusetts, denounced "the French system-mongers, from the quintumvirate at Paris to the Vice-President and minority in Congress, as apostles of atheism and anarchy, bloodshed, and plunder." In charges delivered in western Pennsylvania, Judge Addison dealt with such subjects as Jealousy of Administration and Government, and the Horrors of Revolution. Washington, then in private life, was so pleased with the series that he sent a copy to friends for circulation.

Convictions under the sedition law were few, but there were enough of them to cause great alarm. A Jerseyman, who had expressed a wish that the wad of a cannon, fired as a salute to the President, had hit him on the rear bulge of his breeches, was fined $100. Matthew Lyon of Vermont, while canvassing for reëlection to Congress, charged the President with "unbounded thirst for ridiculous pomp, foolish adulation, and a selfish avarice." This language cost him four months in jail and a fine of $1000. But in general the law did not repress the tendencies at which it was aimed but merely increased them.

The Republicans, too weak to make an effective stand in Congress, tried to interpose state authority. Jefferson drafted the Kentucky Resolutions, adopted by the state legislature in November, 1798. They hold that the Constitution is a compact to which the States are parties, and that "each party has an equal right to judge for itself as well of infractions as of the mode and measure of redress." The alien and sedition laws were denounced, and steps were proposed by which protesting States "will concur in declaring these Acts void and of no force, and will each take measures of its own for providing that neither these Acts, nor any others of the general Government, not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories." The Virginia Resolutions, adopted in December, 1798, were drafted by Madison. They view "the powers of the federal Government as resulting from the compact to which the States are parties," and declare that, if those powers are exceeded, the

States "have the right and are in duty bound to interpose." This doctrine was a vial of woe to American politics until it was cast down and shattered on the battlefield of civil war. It was invented for a partisan purpose, and yet was entirely unnecessary for that purpose.

The Federalist party as then conducted was the exponent of a theory of government that was everywhere decaying. The alien and sedition laws were condemned and discarded by the forces of national politics, and state action was as futile in effect as it was mischievous in principle. It diverted the issue in a way that might have ultimately turned to the advantage of the Federalist party, had it possessed the usual power of adaptation to circumstances. After all, there was no reason inherent in the nature of that party why it should not have perpetuated its organization and repaired its fortunes by learning how to derive authority from public opinion. The needed transformation of character would have been no greater than has often been accomplished in party history. Indeed, there is something abnormal in the complete prostration and eventual extinction of the Federalist party; and the explanation is to be found in the extraordinary character of Adams's administration.

It gave such prominence and energy to individual aims and interests that the party was rent to pieces by them.

In communicating the X. Y. Z. dispatches to Congress, Adams declared: "I will never send another Minister to France without assurance that he will be received, respected, and honored, as the representative of a great, free, powerful, and independent nation." But on receiving an authentic though roundabout intimation that a new mission would have a friendly reception, he concluded to dispense with direct assurances, and, without consulting his Cabinet, sent a message to the Senate on February 18, 1799, nominating Murray, then American Minister to Holland, to be Minister to France. This unexpected action stunned the Federalists and delighted the Republicans as it endorsed the position they had always taken that war talk was folly and that France was ready to be friendly if America would treat her fairly. "Had the foulest heart and the ablest head in the world," wrote Senator Sedgwick to Hamilton, "been permitted to select the most embarrassing and ruinous measure, perhaps it would have been precisely the one which has been adopted." Hamilton advised that "the measure must go into effect with the additional idea of a commission of three." The committee of the Senate to whom the nomination was referred made a call upon Adams to inquire his reasons. According to Adams's own account, they informed him that a commission would be more satisfactory to the Senate and to the public. According to Secretary Pickering, Adams was asked to withdraw the nomination and refused, but a few days later, on hearing that the committee intended to report against confirmation, he sent in a message nominating Chief Justice Ellsworth and Patrick Henry, together with Murray, as envoys extraordinary. The Senate, much to Adams's satisfaction, promptly confirmed the nominations, but this was because Hamilton's influence had smoothed the way. Patrick Henry declined, and Governor Davie of North Carolina was substituted. By the time this mission reached France, Napoleon Bonaparte was in power and the envoys were able to make an acceptable settlement of the questions at issue between the two countries. The event came too late to be of service to Adams in his campaign for reëlection, but it was intensely gratifying to his self-esteem.

Some feelers were put forth to ascertain whether Washington could not be induced to be a candidate again, but the idea had hardly developed before all hopes in that quarter were abruptly dashed by his death on December 14, 1799, from a badly treated attack of quinsy. Efforts to substitute some other candidate for Adams proved unavailing, as New England still clung to him on sectional grounds. News of these efforts of course reached Adams and increased his bitterness against Hamilton, whom he regarded as chiefly responsible for them. Adams had a deep spite against members of his Cabinet for the way in which they had foiled him about Hamilton's commission, but for his own convenience in routine matters he had retained them, although debarring them from his confidence. In the spring of 1800 he decided to rid himself of men whom he regarded as "Hamilton's spies." The first to fall was McHenry, whose resignation was demanded on May 5, 1800, after an interview in which — according to McHenry — Adams reproached him with having "biased General Washington to place Hamilton in his list of major-generals before Knox." Pickering refused to resign, and he was dismissed from office on May 12. John Marshall became the Secretary of State, and Samuel Dexter of Massachusetts, Secretary of War. Wolcott retained the Treasury portfolio until the end of the year, when he resigned of his own motion.

The events of the summer of 1800 completed the ruin of the Federalist party. That Adams should have been so indifferent to the good will of his party at a time when he was a candidate for re-election is a remarkable circumstance. A common report among the Federalists was that he was no longer entirely sane. A more likely supposition was that he was influenced by some of the Republican leaders and counted on their political support. In biographies of Gerry it is claimed that he was able to accomplish important results through his influence with Adams. At any rate, Adams gave unrestrained expression to his feelings against Hamilton, and finally Hamilton was aroused to action. On August 1, 1800, he wrote to Adams demanding whether it was true that Adams had "asserted the existence of a British faction in this country" of which Hamilton himself was said to be a leader. Adams did not reply. Hamilton waited until October 1, and then wrote again, affirming "that by whomsoever a charge of the kind mentioned in my former letter, may, at any time, have been made or insinuated against me, it is a base, wicked, and cruel calumny; destitute even of a plausible pretext, to excuse the folly, or mask the depravity which must have dictated it."

Hamilton, always sensitive to imputations upon his honor, was not satisfied to allow the matter to rest there. He wrote a detailed account of his relations with Adams, involving an examination of Adams's public conduct and character, which he privately circulated among leading Federalists. It is an able paper, fully displaying Hamilton's power of combining force of argument with dignity of language, but although exhibiting Adams as unfit for his office it advised support of his candidacy. Burr obtained a copy and made such use of parts of it that Hamilton himself had to publish it in full.

In this election the candidate associated with Adams by the Federalists was Charles Cotesworth Pinckney of South Carolina. Though one Adams elector in Rhode Island cut Pinckney, he would still have been elected had the electoral votes of his own State been cast for him as they had been for Thomas Pinckney, four years before; but South Carolina now voted solidly for both Republican candidates. The result of the election was a tie between Jefferson and Burr, each receiving 73 votes, while Adams received 65 and Pinckney 64.

The election was thus thrown into the House, where some of the Federalists entered into an intrigue to give Burr the Presidency instead of Jefferson, but this scheme was defeated largely through Hamilton's influence. He wrote: "If there be a man in this world I ought to hate, it is Jefferson. With Burr I have always been personally well. But the public good must be paramount to every private consideration."

The result of the election was a terrible blow to Adams. His vanity was so hurt that he could not bear to be present at the installation of his successor, and after working almost to the stroke of midnight signing appointments to office for the defeated Federalists, he drove away from Washington in the early morning before the inauguration ceremonies began. Eventually he soothed his self-esteem by associating his own trials and misfortunes with those endured by classical heroes. He wrote that Washington, Hamilton, and Pinckney formed a triumvirate like that of Antony, Octavius, and Lepidus, and "that Cicero was not sacrificed to the vengeance of Antony more egregiously than John Adams was to the unbridled and unbounded ambition of Alexander Hamilton in the American triumvirate."

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INDEX

Adams, John, favors making government impressive through ceremony, 8–9; attitude toward Genet affair, 136; reelected Vice-president, 178; elected President, 195–96; personal characteristics, 200; relations with Jefferson, 200–01; Cabinet, 201–03; defeat at election of 1800, 226

Addison, Alexander, Judge, 218

Algiers, relations with, 104 *et seq.*; treaty with, 112–13

Alien and Sedition laws, 215 *et seq.*

Ames, Fisher, of Massachusetts, 32–33, 43–44, 55, 62, 81, 90, 101, 110, 154, 191

Bacri, the Jew, 113

Barclay, Thomas, 107

Baldwin, Abraham, of Georgia, 110

Barlow, Joel, 119, 199

Barry, John, Captain, 211

Beard, C. A., *Economic Origins of Jeffersonian Democracy*, 76–77

Benson, Egbert, of New York, 55, 66

Boudinot, Elias, of New Jersey, 33, 38, 55, 65–66

Bradford, William, of Rhode Island, 188

Burke, Edanus, of South Carolina, 67, 68

Burr, Aaron, 226

Butler, Pierce, of South Carolina, 29

Cabinet, President's, a development after Washington's administration, 24–25; status of, 50

Campbell, William, Major, 102–103

Carmichael, William, 144

Church, Edward, U. S. consul at Lisbon, 108

Clark, Abraham, of New Jersey, 110, 152

Clark, George Rogers, 120, 124

Clinton, George, of New York, 178

Constellation, The, ship, 113, 210, 211

Constitution, The, ship, 113, 210

Constitutional amendments adopted, 32

Daily Advertizer, 143

Dauphin, The, ship, 106

Dayton, Jonathan, of New Jersey, 152, 190

Dexter, Samuel, of Massachusetts, 223

District of Columbia, exact site to be selected by the President, 74

Ellsworth, Oliver, of Connecticut, 51, 218

Federal Hall, 12–13

Federalist, 70

Federalist party, 224

Finance, National, Tariff bill, 26–31; debt of United States (1790), 57 Assumption bill, 67

Finance—*Continued*
et seq., 169; national bank established, 77; mint established, 77
Fishbourn, Benjamin, 90–91
Fitzsimmons, Thomas, of Pennsylvania, 45–46, 47, 49, 110
France, relations with United States, 115 *et seq.*; treaties of 1778, 120–21; representation in United States, 198-99; special mission to, 201 *et seq.*; treaties abrogated (1798), 210; maritime troubles with, 210-12; second mission to, 222
Fraunces, A. G., 179
Freneau, Philip, editor of *National Gazette*, 138

Genet, Edmond, appointed French minister to United States, 115; a trained diplomatist, 115-16; audacious mission, 118–22; reception in United States, 122–24; policy toward Louisiana, 124; argues for treaty rights, 132–33; public opinion for, 136–37; arrest by French Government, 144; success, 140–41; United States becomes his asylum, 144; bibliography, 228–29
Germantown, Proposal to place capital at, 72
Gerry, Elbridge, of Massachusetts, 33 *et seq.*, 55, 203, 207, 224
Giles, W. B., of Virginia, 110–12, 166 *et seq.*, 179–81, 191, 193–94
Grange, The, ship, 123, 133
Grayson, William, of Virginia, 51
Great Britain, lays down contraband regulations, 149–50; retains Western posts in America, 154, 158–59; treaty with (1795), 158–62
Greenville, Treaty of (1795), 102
Gwinnett, Button, 91

Hail Columbia, 209–10
Hamilton, Alexander, personal appearance, 3; aid in finance sought by Washington, 4; advises Washington as to deportment, 7–8, 10; appointed Secretary of Treasury, 22–23; rivalry between Madison and, 48; opinion as to establishment of courts, 52; report to Congress (1790), 54 *et seq.*; stand on the question of security of transfer, 64; interest in site for national capital, 71–72; report on manufactures, 77; appreciation of, 78–79; author of interrogatories to the cabinet (1793), 126–128; opinion on French treaty obligations, 131–32; stands against Jefferson, 136; calmness in regard to Genet affair, 137; "Pacificus," 139; "No Jacobin," 143; resigns as Secretary of Treasury (1793), 164–65; party warfare against, 168 *et seq.*; requests a Treasury investigation, 179; opinion as to enforcing law, 185–86; remains trusted adviser, 190-91; aids Wolcott in preparing scheme of taxation, 204; appointed major-general, 212–13; relations with Adams, 224–25; bibliography, 228
Hammond, George, British minister to United States, 150, 154
Hancock, John, 92
Harmar, Josiah, Lieutenant-Colonel, 93, 97
Hazard, Ebenezer, Postmaster-General, 21–22
Henry, Patrick, 189
Humphreys, David, Colonel, 107–08

Indian troubles in the West, 83–87, 93-96, 97–98, 101–02

Jackson, Andrew, 193
Jackson, James, of Georgia, 53, 60
Jay, John, Secretary of Foreign Affairs, 21; appointed envoy extraordinary to Great Britain (1794), 155–56; mission to England, 158 *et seq.*; elected Governor of New York, 163
Jay treaty, terms of, 158–63; agitation over, 190–92; French attitude toward, 198
Jefferson, Thomas, appointed Secretary of State, 23; attitude on question of assumption of state debts, 73–74; importance of public service, 74; report on the Algerine question, 105–06; as minister to Paris, 117; opinion on French treaty obligations, 129–31, 134–37; "The Anas," 137; disturbs the administration, 138–39; resigns as Secretary of State (1793), 148; for the principle "free ships, free goods," 150; opponent of Hamilton, 174–76; drafts Kentucky Resolutions (1798), 219; elected President, 225–26; bibliography, 228
Johnson, Thomas, of Maryland, 189
Jones, John Paul, Admiral, 107
Judiciary, Establishment of the, 51–53

Kentucky Resolutions, 219
Knox, Henry, Secretary of War since 1785, 21; Secretary of War and of the Navy, 23; submits plan for militia, 82; supports Hamilton in question of treaty obligations, 129–30, 136; recommended as major-general by Washington, 212; question of precedence of rank, 213–14; declines appointment, 215

La Carmagnole, ship, 141
L'Ambuscade, ship, 123–24, 133
L'Ami de la Point à Petre, ship, 141
La Montagne, ship, 141
L'Amour de la Liberté, ship, 141
La Vengeance, ship, 141
Le Cassius, ship, 141
Le Citoyen Genet, ship, 141
Lee, Arthur, 22
Lee, Charles, of Virginia, 188, 205
Lee, R. H., of Virginia, 51
l'Enfant, P. C., 12
Le Petit Démocrate, ship, 141, 142, 143
L'Espérance, ship, 141
Le Vainqueur de Bastille, ship, 141
Little Sarah, ship, 141
Livermore, Samuel, of New Hampshire, 43, 61, 67–68
Livingston, Walter, 22
Louisiana territory, 119, 124

McGillivray, Alexander, Head chief of the Creeks, 83–87
McHenry, James, of Maryland, 189, 205, 223
McIntosh, Lachlan, 91
Maclay, William, of Pennsylvania, Diary of, 19–20, 60, 69, 70–71, 72, 88–89, 107
Madison, James, coöperates with Hamilton in government organization, 2; personal appearance, 3; introduces scheme for raising revenue, 26–31; upholds President's power of removal, 40–41; acts as advisor to Washington, 47; opinion as to system of federal courts, 52; stand on question of security of transfer, 65, 66–67; opinion on creation of a navy, 109–10; "Helvidius," 140; attitude toward non-intercourse, 154; drafts Virginia Resolutions (1798), 219
Marshall, John, opinion on neutrality of United States (1793),

Marshall—*Continued*
126; appointed commissioner to France, 203; becomes Secretary of State, 223
Military preparedness, Policy of, 81–83, 96–97, 100–01, 151–52
Monroe, James, 197–98
Morris, Gouverneur, 117–18
Morris, Robert, 4, 29, 35, 72
Moultrie, William, General, 122–23
Murray, W. V., Minister to Holland, 221

Napoleon Bonaparte, 206
National Gazette, 142–43
Naval policy of the United States, 109 *et seq.*
Neutrality, Question of (1793), 125 *et seq.*
New York, desires to be capital of nation, 12; Washington's home in, 15
Nicholas, W. C., of Virginia, 110
Non-intercourse bill, 153–54
North Carolina admitted to the Union (1789), 93

O'Brien Richard, Captain, 106, 108, 109
O'Fallon, James, Dr., 119
Osgood, Samuel, Postmaster-General, 22, 23

Page, John, of Virginia, 42, 61–62
Paine, Thomas, 119
Paterson, William, of New Jersey, 189
Philadelphia club, 183
Pickering, Timothy of Massachusetts, 189, 223
Pinckney, C. C., 189, 198–99, 212–13, 225
Pinckney, Thomas, 145, 148, 150, 155, 196
President of the United States, social position and duties, 5–10; official title, 10–11; power of removal by, 34, 39–42, 89
Putnam, Rufus, General 81

Randolph, Edmund, appointed Attorney-General, 23; opinion on question of French treaty obligations, 129–30; divides influence between factions in cabinet, 136; transferred to State Department, 168; letter to Washington, 177; opinion as to enforcing law, 185; applies to French minister for funds, 187–88; retires, 188
Republican party, 173
Residence act, 74
Rhode Island admitted to the Union (1790), 93

St. Clair, Arthur, General, 97, 98, 100
Sans Pareil, ship, 141
Sedgwick, Theodore, of Massachusetts, 45, 151, 152
Senate, privy council function of, 87–89
Short, William, 144
Smith, Samuel, of Maryland, 110
Smith, William, of South Carolina, 112
Spain, Treaty with (1795), 145–46
Stone, M. J., of Maryland, 68
Story, Joseph, Justice, 50

Talleyrand, 206–09
Tariff, *see* Finance.
Taylor, John, 76
Treasury Department, established by Congress, 34–39; rights and duties of Secretary defined, 42–51; Secretary's report, 55–56
Trenton, proposal to place capital at, 72
Truxtun, Thomas, Captain, 211

United States, The, ship, 113, 210

Virginia Resolutions, 219–20

Wadsworth, Jeremiah, of Connecticut, 37
War Department, Opposition to, 81
Washington, George, reluctant to reassume public responsibilities, 1; installed as President (1789), 2; personal characteristics, 5; his magnificence, 13–14; his levees, 18; first message to Congress, 20–21; first cabinet, 22–23; message to Senate (1789), 81–82; differences with the Senate, 87–91; tours, 91–93; church-going habits, 92–93; receives news of St. Clair's defeat, 98–100; concern about Genet affair, 137–38; opinion as to validity of French treaty, 147; dependence upon Hamilton, 147–48; address of Dec. 3, 1793, 150–51; reëlected President, 177–78; party spirit against, 192; Farewell Address (1796), 192–93; death (1799), 223; bibliography, 227–28
Washington, Martha, arrival in New York, 16–17; her entertainments, 18–19
Wayne, Anthony, General, 101, 102–03
West Indies, trade with, 160–61, 162–63
Whiskey insurrection, 182 *et seq.*
White, Alexander, of Virginia, 39
Willett, Marinus, Colonel, 85
Wolcott, Oliver, of Connecticut, 189, 203, 223–24

"X. Y. Z." dispatches, 207–09, 221

SEP 4- 1929